DOCKET NO. FST-FA-195022461-S	SUPERIOR COURT STAMFORD-NORWALK JUDICIAL DISTRICT 2024 APR 17 A 11:01	**: SUPERIOR COURT**
ABBEY B. KOSAKOWSKI		**: JUDICIAL DISTRICT OF**
V.		**: STAMFORD-NORWALK**
		: AT STAMFORD
JOHN D. KOSAKOWSKI		**: APRIL 17, 2024**

MEMORANDUM OF DECISION

DEFENDANT'S MOTION FOR MODIFICATION, POST JUDGMENT (#146.00)

On February 27, 2024, and March 18, 2024, the parties were before the court for a hearing on the defendant's post judgment motion for modification of child support (Entry #146.00). Both parties appeared as self-represented parties. The court heard testimony from the parties, reviewed the exhibits that were admitted into evidence, and took judicial notice of the contents of the court file. The court reserved decision at the conclusion of the hearing.[1]

PROCEDURAL HISTORY

The following procedural history is relevant to this court's decision. On December 12, 2019, a judgment on an uncontested dissolution was entered. (*Novack, J.*). The parties' Agreement dated December 12, 2019, was approved by the court, *Novack, J.*, and incorporated by reference into the final judgment. (Entry #107.00 and 108.00). On June 1, 2023, the defendant filed a motion to modify child support, postjudgment. (Entry #135.00). On August 3, 2023, the court issued an order vacating the hearing and notice for the hearing on entry #135.00

[1] Pursuant to Practice Book § 25-59A (h), the financial affidavits of the parties are hereby unsealed because the financial orders are in dispute.

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because the defendant failed to serve notice of the hearing upon the plaintiff. (*Vizcarrondo, JSC*, Entry #136.11). The defendant filed a motion to modify child support, postjudgment, a second time on August 9, 2023 (Entry #146.00). The plaintiff was served with the motion on September 11, 2023. (Entry #150.00). **The plaintiff does not oppose the defendant's motion.**

The plaintiff filed a motion to modify the dissolution agreement, postjudgment, as it applies to the distribution of equity of the marital home after sale. (Entry #160.00). The plaintiff's motion is scheduled to be heard on July 19, 2024.

DISCUSSION

"Modification of alimony [or support] after the date of a dissolution judgment, unless and to the extent that the decree precludes modification, is governed by General Statutes § 46b-86." *Nappo* v. *Nappo*, 188 Conn. App. 574, 587, 205 A.3d 723 (2019). General Statutes § 46b-86 (a) provides in relevant part: "Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support . . . for the other party or a minor child of the parties may, at any time thereafter, be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines . . . . After the date of judgment, modification of any child support . . . may be made upon a showing of such substantial change of circumstances, whether or not such change of circumstances was contemplated at the time of dissolution. . . ."

Section 46b-86 (a) provides for modification of support in two sets of circumstances, "[t]he first allows the court to modify a support order when the financial circumstances of the individual parties have changed, regardless of their prior contemplation of such changes. The second allows the court to modify child support orders that were once deemed appropriate but

no longer seem equitable in the light of changed social or economic circumstances in the society as a whole . . ." (Internal quotation marks omitted.) *Cincogrono* v. *Cincogrono*, Superior Court, judicial district of Waterbury, Docket No. FA-19-5025267-S (October 17, 2022, *Parkinson, J.*).

"Under [§ 46b-86 (a)], the party seeking the modification bears the burden of demonstrating that such a change has occurred. To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it." (Internal quotation marks omitted.) *Yanicky* v. *O'Conner*, Superior Court, judicial district of Tolland, Docket No. FA-15-6009197-S (January 15, 2019, *Armata, J.*).

Correspondingly, in regard to the issue of a child reaching the age of majority, General Statutes § 46b-84 (b) provides: "If there is an unmarried child of the marriage who has attained the age of eighteen and is a full-time high school student, the parents shall maintain the child according to their respective abilities if the child is in need of maintenance until such child completes the twelfth grade or attains the age of nineteen, whichever occurs first. . . ."

During the hearing, the parties testified that they have three children, JPK born April 17, 2003, who is twenty years old; SEK born October 14, 2004, who is nineteen years old and RMK born April 11, 2007, who is seventeen years old.[2] The youngest child, RMK resides with the plaintiff. JPK and SEK reached age eighteen and graduated from high school in June of 2021 and June of 2022, respectively. For the purposes of this motion, the period from June 2021 to June 2022 is relevant.

[2] In view of the Supreme Court's policy of protecting the privacy interests of juveniles, the court refers to the children involved in this matter by initials. See, e.g., *Boisvert* v. *Gavis*, 332 Conn. 115, 121 n.3, 210 A.3d 1 (2019); *Frank* v. *Dept. of Children & Families*, 312 Conn. 393, 396 n.1, 94 A.3d 588 (2014).

Paragraph four of the party's dissolution agreement dated December 12, 2019, provided for child support to the plaintiff as follows: "as to current and/or past due child support: 66% by the plaintiff and 34% by the defendant. Defendant's share per the [child support] guidelines is $489/week. If the court finds that this amount represents a deviation, then a deviation is warranted based on the parties' income potential, and division of marital assets and liabilities" (Entry #107.00). On March 18, 2024, the defendant testified, and the plaintiff confirmed that he was current in child support until sometime in year 2022 when their first born was expecting to graduate high school. The defendant also testified that he has not paid child support since December 7, 2023, and does not know the exact amount he is required to pay. According to testimony on the record,[3] the court, *Truglia, J.*, held a hearing on November 30, 2023, and December 7, 2023. In this matter, the issue of arrearages was discussed by the court. It was determined that the amount in arrearages owed was $29,324.06.[4] During the course of these proceedings, the defendant paid $29,324.06 after the court found him in contempt. The defendant also previously paid $22,500 in June of 2023 when he again was found in contempt. (Entry #139.00 and 136.00) (mittimus), as well as another $7000 as indicated by the plaintiff in her affidavit dated June 1, 2023, under "amounts paid since 05/19/23." (Entry #137.00). The total amount in child support paid by the defendant to the plaintiff since May of 2023 is $58,824.06.

On November 1, 2022, the parties appeared before the court on the plaintiff's previous motion for contempt. Following that hearing, the court found the defendant in contempt in the

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[3] Of note, the transcript of November 30, 2023, is unsigned and subject to Judge Truglia's review and signature.

[4] "I can find that as of today, there's an arrearage of $29,324.06. And I will order your client committed to the custody of the Commission of Corrections." See Tr. 11/30/23, 1:3-6 (Excerpt 2:14-2:15).

amount of $30,438.06 ($16,691 for child support and $13,747.06 in unreimbursed expenses) (entry #115.01, *Heller, JSC*). There are forty-four weeks between November 1, 2022, and September 11, 2023. The defendant's child support obligation of $489 per week[5] pursuant to the judgment totals $21,516. The sum total amount is $51,954.06. Therefore, this court finds that the defendant is current in his child support obligations as of September 11, 2023.

The defendant testified that he is currently employed by Lax.com for the Town of Darien as of April of 2023. The defendant's financial affidavit reports that he earns a gross weekly salary of $880 and net weekly salary of $781. (Entry #162.00). The defendant further reports that he receives assistance from family and friends of $125 per week or $500 a month. The defendant is a Harvard graduate with an MBA from Emory College. At the time of the dissolution, he was employed as the head of operations for Citadel Securities for fifteen years, which subsequently merged with GTS. Due to industry consolidation the defendant lost his employment in December 2019. He became a special advisor for RMG (Riverside Management) and received no income. The defendant testified that he does not earn a salary until a deal is closed, which has not occurred. In 2021, the defendant was hired by OASIS for approximately four months and earned $150,000. The defendant testified that he has been unable to seek gainful employment because his business licenses (series 7, 63 and 3) are on hold. The pending criminal matters, which stem from the parties' discord, requires a disposition such as a dismissal and expungement so that he can submit an unblemished U4 renewal application.

[5] Of note, the correct support amount pursuant to the December 12, 2019 Agreement is $489. Due to scrivener's error, around March 15, 2023, the plaintiff began inverting the numbers (e.g. "$498" instead of "$489" and because of this error, the calculations in the plaintiff's affidavits were incorrectly based on $498. The court has recalculated accordingly.

The plaintiff is employed with Torchlight Investors, LLC and earns a gross weekly income of $1839 and net weekly income of $1418. (Entry #164.00). The submitted child support guidelines reports a presumptive child support for one child to be $111 per week. (Entry #164.00). The plaintiff testified that her income has not changed since she has worked at Torchlight.

Since the date of judgment, the defendant has experienced significant challenges in his personal and professional life, such as residing in a sober home, limited earning capacity, and two children reaching the age of majority. Based on those factors, this court finds that a significant change in circumstances has occurred that warrants the reduction of the defendant's child support obligation.[6]

The court ran child support guidelines for one child and found that the plaintiff's net weekly income to be $1424 and defendant's net weekly income to be $661. The presumptive weekly support for one child is $105.[7] The percentages for unreimbursed medical expenses are 73 percent for the plaintiff and 27 percent for the defendant.

In regard to any potential retroactive modification, the court is again guided by § 46b-86 (a), which provides in relevant part, "No order for periodic payment of permanent alimony or support may be subject to retroactive modification, except that the court may order modification with respect to any period during which there is a pending motion for modification of an alimony or support order from the date of service of notice of such pending motion upon the opposing party pursuant to section 52-50."

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[6] The court also notes that due to a miscalculation by the parties, the defendant has been paying double the amount of child support since the inception of the agreement.
[7] See court exhibit 1.

In *Mason* v. *Ford*, 176 Conn. App. 658, 168 A.3d 525 (2017), the Appellate Court instructed that "[t]he trial court's discretion to give a modification retroactive effect is not unlimited. Its authority is expressly limited by § 46b-86 (a), which provides in relevant part that [n]o order for periodic payment of . . . support may be subject to retroactive modification, except that the court may order modification with respect to any period during which there is a pending motion for modification . . . from the date of service of notice of such pending motion upon the opposing party . . . ." (Internal quotation marks omitted.) Id., 664. "Turning to the trial court's determination of the end date of the arrearage period, the record reveals that the trial court did not comply with the limitations of § 46b-86 (a). As previously noted, this statute provides the court discretion to modify a support order with retroactive effect to the date upon which the motion to modify was served upon the opposing party. In [*Mason*,] the trial court ordered the modification to take effect retroactively on March 7, 2016; however, the defendant's motion to modify was not served on the plaintiff until June 14, 2016. Strict compliance with the limitations of § 46b-86 (a) would have permitted an effective date no earlier than June 14, 2016." Id., 665.

Our Supreme Court has instructed that "[i]t has long been settled that a trial court has the authority to enforce its own orders. This authority arises from the common law and is inherent in the court's function as a tribunal with the power to decide disputes." *O'Brien* v. *O'Brien*, 326 Conn. 81, 96, 161 A.3d 1236 (2017). Consequently, "[a] party to a court proceeding must obey the court's orders unless and until they are modified or rescinded and may not engage in self-help by disobeying a court order to achieve the party's desired end." (Internal quotation marks omitted.) *O'Brien* v. *O'Brien*, supra, 236 Conn. 97. On the other hand, however, the court may not enforce support for dates beyond what is statutorily permissible pursuant to § 46b-84 (b).

The defendant's motion shall be retroactive to the date of service, September 11, 2023. The child support required to be paid for three children in December of 2019 was $489 per week. The fact that the parties two oldest children graduated high school in 2021 and 2022 will not serve as a basis to provide a retroactive credit to the defendant. The defendant had a duty to file a motion to modify the party's separation agreement and failed to do so until 2023. Therefore, the court finds that going forward, $105 for one child is the defendant's presumptive child support pursuant to the current child support guidelines.

ORDERS

The court has fully considered the criteria set forth in General Statutes §§ 46b-84 and 46b-86, as well as the applicable case law, the evidence, the demeanor and credibility of the parties, the parties' proposed orders, and the contents of the court file judicially noticed in making the findings set forth above and in reaching the decisions that are reflected in the orders that issue below.

The defendant shall no longer be required to pay child support pursuant to the parties' agreement in the amount of $489 per week dated December 12, 2019.

The defendant has arrearage amount of $2310 (22 weeks at $105 per week from dates of September 11, 2023, to April 19, 2023).

The defendant shall commence paying child support in the amount $105 per week (or $454.65 per month) plus $10 in arrears, a total of $115 commencing on April 26, 2024. Defendant shall make payments to the plaintiff by direct deposit into her checking account, by wire transfer, or by a mobile payment service such as PayPal, Venmo or Zelle.

The parties shall exchange their 1099's, K1s and state and federal tax returns no later than February 15th following the end of each tax year, as long as a party has a financial obligation to the other party.

The court retains jurisdiction to modify child support pursuant to General Statutes §46b-86.

Unless otherwise specifically set forth herein, these orders are effective immediately.

DeCastro Tunnard, JSC

DECISION ENTERED IN
ACCORDANCE WITH THE
FOREGOING 4/17/24
JDNO SENT 4/17/24
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