

FBT-FA-22-6114448-S

JORGE ESPINOZA

v.

ROSA VIZHCO-MOCHA

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SUPERIOR COURT

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JUDICIAL DISTRICT  
OF BRIDGEPORT

SUPERIOR COURT

JUDICIAL DISTRICT  
OF BRIDGEPORT

AT BRIDGEPORT

JUNE 7, 2024

MEMORANDUM OF DECISION

On March 18, 2024, the parties appeared before the court with counsel for an evidentiary hearing on the Motion for Contempt Post-Judgment (Entry No. 141.00) filed by the defendant, Rosa Vizhco-Mocha, and the Motion to Open and Modify Judgment (Entry No. 142.00) filed by the plaintiff, Jorge Espinoza. In the motion for contempt, the defendant claims that the plaintiff stopped paying alimony after August 24, 2023. Entry No. 141.00. As relief, she seeks a finding of contempt, an order commanding the plaintiff to pay outstanding alimony, statutory interest pursuant to General Statutes § 37-3a, and an award of reasonable attorneys' fees pursuant to General Statutes § 46b-52, § 46b-87, and paragraph 13.1 of the agreement that was incorporated into the judgment. The motion for contempt was served by abode service on September 30, 2023. Entry No. 143.00.

In the motion to open and modify filed on October 10, 2023, the plaintiff seeks to modify the judgment ordering him to pay weekly alimony of \$300 until September 2026. Entry No. 142.00. As support for the motion, the plaintiff claims that on or about September 15, 2023, he was terminated from his employment and his income has substantially decreased. Id. The plaintiff served the motion by abode service on November 3, 2023. Entry No. 146.00.

Mailed to: Judicial Reporter  
Jose Antonio Pal & Associates LLC  
Fogarty Cohen Russo & Nemiroff LLC  
6/7/2024  
LM

## A. Findings<sup>1</sup>

### 1. Defendant's Motion for Contempt

“Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense.” (Internal quotation marks omitted.) *Brody v. Brody*, 145 Conn. App. 654, 662, 77 A.3d 156 (2013). To prevail on a motion for contempt, the moving party must prove, by clear and convincing evidence, that the respondent willfully violated a clear and unambiguous court order. See *Puff v. Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020). If the moving party establishes this prima facie case, the burden of production then shifts to the respondent to provide evidence in support of the defense of an inability to comply with the court order or of another valid defense. *Id.* A finding of contempt is a question of fact. See *Brody v. Brody*, 315 Conn. 300, 318–19, 105 A.3d 887 (2015).

On May 1, 2023, the court (*Nieves, J.*) entered a judgment of uncontested dissolution. Entry No. 139.00. As part of the judgment, the court incorporated by reference the terms of the agreement signed by the parties. Entry No. 133.00. Article II of the agreement, paragraph 2.1, provides that the plaintiff shall pay alimony during his lifetime at \$300 per week until the defendant's death, her remarriage, or September 30, 2026, whichever event occurs first. Entry

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<sup>1</sup> “The [fact-finding] function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties . . . .” (Internal quotation marks omitted.) *Cavolick v. DeSimone*, 88 Conn. App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906, 876 A.2d 1198 (2005). “It is well established that in cases tried before courts, trial judges are the sole arbiters of the credibility of witnesses and it is they who determine the weight to be given specific testimony.” *In re Antonio M.*, 56 Conn. App. 534, 540, 744 A.2d 915 (2000). “The trier is free to accept or reject, in whole or in part, the testimony offered by either party.” *Smith v. Smith*, 183 Conn. 121, 123, 438 A.2d 842 (1981). “A court is entitled to rely on sworn financial statements filed in dissolutions actions, and when it finds it cannot, is entitled to draw adverse inferences which go to the core of the entire proceeding.” *Voloshin v. Voloshin*, 12 Conn. App. 626, 628–29, 533 A.2d 573 (1987).

No. 133.00. At his election, the plaintiff was permitted to pay alimony monthly, on or before the fifteenth day of each month. Id. He agreed that the obligation to pay alimony is nonmodifiable as to term and amount. Id. The court finds that the terms of the agreement and judgment relating to the plaintiff's obligation to pay alimony are clear and unambiguous.

The plaintiff paid alimony at \$300 per week until August 24, 2023, the date of his last payment. Def. Ex. K. At the time he stopped paying, the plaintiff was employed by Jay Construction (Gedilson Goncalves). As a defense to his failure to pay alimony, the plaintiff claims that he was terminated from employment in or about October 2023.<sup>2</sup> The court rejects this defense. According to his financial affidavit filed on April 11, 2023 (Entry No. 131.00), the plaintiff's weekly gross income was \$912 from Jay Construction and \$725 from the rental income (with weekly net income of \$1268). The property he owns in Bridgeport is valued at \$500,000. Id. He lives at the first floor, and he rents the second floor for \$1500 per month (Def. Ex. S) and the third floor for \$1500 per month (Def. Ex. R). He previously leased the first floor for \$1450 per month until November 2023, when he moved from the basement to the first-floor unit. Although the plaintiff is collecting rent of at least \$3000 per month from the tenants, his bank statements do not reflect deposits for any rental payments. The balance in his bank account was \$5424.59 as of September 19, 2023, \$3565.26 as of October 19, 2023, \$3229.70 as of November 17, 2023, \$5008.52 as of December 18, 2023, and \$1906.01 as of January 19, 2024. Def. Ex. K. The plaintiff received payments for work that he performed on "odd jobs" and for his employer after his last alimony payment on August 24, 2023, including deposits from his employer in December 2023. Id. He also receives rental revenue from his tenants. Id. Based on

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<sup>2</sup> In his motion, the plaintiff claimed that he was terminated in September 2023. At the hearing, he claimed that he was terminated in October 2023.

the evidence, notwithstanding his alleged loss of employment with Jay Construction, the plaintiff had sufficient funds in his bank account to pay alimony.

As another defense, the plaintiff claims that, at the time of the divorce on April 23, 2023, he was represented by an attorney who did not speak Spanish. He brought a friend to translate. The plaintiff suggested that he did not fully understand the agreement that he signed, and he was not properly canvassed at the time the court approved the agreement. He did understand that he was required to pay \$175,000 to the defendant as part of the agreement, but he claims that it was his understanding that this lump sum payment would satisfy all his payment obligations. He stopped paying alimony on August 24, 2023, based on this alleged understanding of the agreement, yet he also claims that he stopped paying alimony because he lost his job.<sup>3</sup> The court does not find the plaintiff's testimony credible, and it rejects this defense. His prior attorney explained to him that he was obligated to continue making alimony payments. On or about September 11, 2023, the plaintiff forwarded a text message to the defendant questioning why she wants more money when she allegedly "swore that [she] was not going to take more money from [him] like that and remember that you swear that to God and to the Virgin del Cisne." Def. Ex. C and Ex. T. He also told her that "God will be the only one who judges," and "I believe with the money that I gave you is already enough." Id. He did not claim in the text message that the payment of \$175,000 satisfied his obligations under the agreement and judgment, and he did not claim that he was unable to pay alimony due to the loss of his job or the increase in his monthly expenses due to the mortgage loan. Instead, he tried to guilt her into giving up the claim for alimony based on her alleged prior comments and her receipt of a substantial payment.

Based on the evidence, the court finds that the plaintiff willfully violated a clear and

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<sup>3</sup> The court did not find the plaintiff's testimony and claim regarding why he stopped paying alimony credible. The plaintiff stopped paying alimony because he thought he had paid "enough" money to the defendant.

unambiguous court order. As of March 14, 2024, the alimony arrearage was \$8700. Def. Ex. G. The court finds that the plaintiff is obligated to pay this amount.

The defendant is seeking interest pursuant to General Statutes § 37-3a. As of March 14, 2024, she claims that the interest amount totals \$236.64. Id. “A trial court must make two determinations when awarding compensatory interest under § 37-3a: (1) whether the party against whom interest is sought has wrongfully detained money due the other party; and (2) the date upon which the wrongful detention began in order to determine the time from which interest should be calculated.” (Internal quotation marks omitted.) *Maloney v. PCRE, LLC*, 68 Conn. App. 727, 755, 793 A.2d 1118 (2002). An allowance of interest is at the discretion of the trial court. *Mihalyak v. Mihalyak*, 30 Conn. App. 516, 620 A.2d 1327 (1993). The court finds that the plaintiff has wrongfully detained money from the defendant as of August 31, 2023.

The defendant also seeks an award of attorneys’ fees. A court may award attorneys’ fees pursuant to General Statutes § 46b-87 relating to a postjudgment motion for contempt. “Once a contempt has been found, § 46b-87 establishes a trial court’s power to sanction a noncomplying party through the award of attorney’s fees. . . . Pursuant to § 46b-87, that sanction may be imposed without balancing the parties’ respective financial abilities.” (Citations omitted; emphasis omitted.) *Dobozy v. Dobozy*, 241 Conn. 490, 499, 697 A.2d 1117 (1997). The plaintiff also agreed in paragraph 13.1 of the agreement that, if a party is adjudged to be in contempt due to a failure to perform any obligation under the agreement or has breached a covenant in the agreement, that party “shall pay the reasonable attorney’s fees, court costs and other expenses incurred by the other party to enforce such obligation or covenant as same is contained in this Agreement or as is incorporated into or made part of any decree of dissolution, divorce or separation.” The court finds that an award of attorneys’ fees and costs would be appropriate in

this case. The court reserves a decision on the amount until the defendant files with the court an updated affidavit of fees to cover the services performed through the date of the hearing. The plaintiff will have one week after the filing of the updated affidavit to file an objection.

## 2. Plaintiff's Motion for Modification

“Section 46b-86 (a) provides that a final order for alimony . . . may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. Under that statutory provision, 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. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order. . . .” (Citation omitted.) *Pishal v. Pishal*, 212 Conn. App. 607, 613–614, 276 A.3d 434 (2022). “Once a trial court determines that there has been a substantial change in the financial circumstances of one of the parties, the same criteria that determine an initial award of alimony and support are relevant to the question of modification. . . . Thus, [w]hen presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties. . . . Second, if the court finds a substantial change in circumstances, it may properly consider the motion and, on the basis of the [General Statutes § 46b-82] criteria, make an order for modification. . . . A finding of a substantial change in circumstances is subject to the clearly erroneous standard of review.” (Citation omitted.) *Id.*, 614.

The plaintiff is thirty-nine years of age. He did not graduate from high school. He works in the construction industry. He was involved in an accident in 2011 and he was in a coma. He

reports that he has hearing loss in his right ear. Although he listed health issues, there was insufficient evidence to show that he is unable to work. In fact, he continues to work as evidenced by his bank statements and testimony.

The plaintiff claims that he was terminated from employment in October 2023, although his bank statements show that his employer paid him money in December 2023. He is currently working odd jobs. He claims that it has been difficult for him because he now has a mortgage expense, and he is not earning sufficient income to pay his expenses. His tenants on the second and third floors are current with their rental payments. In his updated affidavit filed on March 18, 2024,<sup>4</sup> he reported weekly gross income from self-employment of \$639.23 and weekly rental income of \$692.30, for a total weekly gross income of \$1331.53 (and weekly net income of \$1331.53). Entry No. 153.00; Def. Ex. Q. He stopped earning rental income of \$1450 from the first-floor unit after he moved into that unit from the basement. He values the real property at \$593,100, and with a mortgage principal balance of \$143,738.28, the value of his equity is \$449,361.72. Id. He claims that his weekly expenses total \$1241.22, including the weekly mortgage expenses of \$667.25. Id. If his financial affidavit is accurate, this leaves him with a cushion of \$90.32 per week to pay other expenses.

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<sup>4</sup> The plaintiff also filed a financial affidavit on October 18, 2023, representing that he was unemployed, and his only income was weekly rental income of \$725. Entry No. 144.00. At that time, he claimed that there was a mortgage with a balance of \$175,000 encumbering the real property valued at \$500,000, with a weekly mortgage payment of \$666. Id. The plaintiff did not produce the loan application to the defendant in response to a document request (Def, Ex. D), and he claimed that his attorney had the information. He reported a bank account balance of \$2800, the same balance that he reported in the financial affidavit filed on April 11, 2023. Id. The bank statements admitted into evidence show a bank account balance of \$3565.26 as of October 19, 2023, more than the amount reported on his financial affidavit signed on October 18, 2023. Def. Ex. K.

Although the court is sympathetic to the plaintiff's current financial situation that includes the loss of employment, the decrease in rental revenue when he made the decision to move out of the basement into the first floor unit that he previously rented for \$1450 per month, and his increased expenses for the mortgage loan,<sup>5</sup> the court will not modify his alimony obligation. Pursuant to Article II, paragraph 2.3, of the agreement and judgment, "Except as provided in paragraph 2.1, the Husband's obligation shall be nonmodifiable as to term and amount." The only events impacting the plaintiff's obligation to pay alimony in paragraph 2.1 are the plaintiff's death, the defendant's death, the defendant's remarriage, or September 20, 2026, whichever event occurs first. None of these events have occurred.

The plaintiff agreed to the provision that alimony is nonmodifiable as to term and amount. He was represented by an attorney at the time he signed the agreement. "It is well established that a separation agreement that has been incorporated into a dissolution decree and its resulting judgment must be regarded as a contract and construed in accordance with the general principles governing contracts. . . . When construing a contract, we seek to determine the intent of the parties from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract." (Internal quotation marks omitted.) *Giordano v. Giordano*, 200 Conn. App. 130, 136, 238 A.3d 113, cert.

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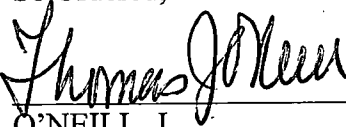
<sup>5</sup> Under the terms of the judgment, the plaintiff had the option to sell the property and pay his obligation to the defendant from the sale proceeds. He elected to satisfy his obligation by borrowing money from a lender and securing the loan with a mortgage.



denied, 335 Conn. 970, 240 A.3d 286 (2020). The court accepted the agreement and entered it as an order of the court. “General Statutes § 46b-86 (a) permits a court to make an alimony award that is not subject to modification. . . . An award may be nonmodifiable as to duration or amount, or both.” (Citations omitted.) *Oudheusden v. Oudhuesden*, 338 Conn. 761, 770, 259 A. 3d 598 (2021). The alimony award in this case is nonmodifiable as to the term and amount.

B. Orders

1. The financial affidavits filed by the parties are ordered to be unsealed.
2. Defendant’s Motion for Contempt Post-Judgment (Entry No. 141.00) is granted. The plaintiff is in contempt for failing to pay weekly alimony of \$300 from August 31, 2023, to March 14, 2024. The total amount owed is \$8700 (arrearage). The court awards interest of \$236.64 (interest) as requested by the defendant. The plaintiff shall pay the arrearage and interest on or before December 1, 2024. The defendant shall file an updated affidavit of attorneys’ fees and costs for the court’s consideration by June 17, 2024. The plaintiff shall have one week after the defendant files the updated affidavit to file an objection.
3. Plaintiff’s Motion to Open and Modify Judgment (Entry No. 142.00) is denied.

So Ordered,  
  
O’NEILL, J.