

DOCKET NO. TTD-FA-22-5015559-S

: SUPERIOR COURT

BUONOMANO, STEPHANY

: JUDICIAL DISTRICT

VS.

: OF TOLLAND

BUONOMANO, ROBERT

: MAY 13, 2024

MEMORANDUM OF DECISION RE: POSTJUDGMENT MOTION FOR MODIFICATION – CHILD SUPPORT (DOCKET ENTRY #157); MOTION FOR ORDER FOR EDUCATIONAL SUPPORT (DOCKET ENTRY #125).

Before the court are two postjudgment motions, the plaintiff’s second amended Motion for modification of child support (Docket Entry #157) and defendant’s Motion for Order Re: Educational Support (Docket Entry #125). A hearing on the pending motions was held on April 15, 2024. Both parties appeared, were represented by competent counsel, and had the opportunity to testify, call and cross examine witnesses, and present evidence.

Findings

The court finds the following facts by a fair preponderance of the evidence. The parties’ marriage was dissolved in October 2022 when their Separation Agreement (Docket Entry #111) was approved and incorporated by reference into the court’s judgment. Docket Entry #114. The parties have two children born issue of the marriage, Allie Buonomano (nineteen years old) and Devin Buonomano (fifteen years old). The parties share joint legal custody with a shared parenting plan for Devin.

At the time of dissolution, the parties agreed that neither would pay child support to the other based upon the similarities in their respective incomes as well as the shared parenting plan. The presumptive child support amount pursuant to the Connecticut Child Support and Arrearage

Guidelines (“Guidelines”) amount at the time of judgment based upon the parties’ then reported

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Pellman + Couley LLC - JDLO
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Stephanie Sabato

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5/13/24

income, which was \$366 per week from plaintiff mother (“Mother”) to defendant father (“Father”) if he were to have custody of the children, and \$342 per week from Father to Mother if she were to have custody of the children. Docket Entry #106.

Throughout the marriage, and at the time of dissolution, both parties worked at Windham IGA (“IGA”), a grocery store owned by Robert Buonomano, Sr. (paternal grandfather). The parties agree that, prior to their contemplation of divorce, it was the general understanding of the family that they would eventually inherit the business and become its owners. The parties were compensated equally, each receiving the same weekly salary and bonus payments. IGA paid the bonus payments in April of every year and the amounts fluctuated depending upon IGA’s profits the preceding year. There were times when the parties did not receive a bonus payment, depending on the needs of the business (for example, when the parties forwent a bonus payment to renovate the grocery store’s kitchen). The financial affidavits of the parties at the time of dissolution each reflect \$1850 as their gross weekly salary plus \$3750 in weekly bonus payments.

It is uncontroverted that the parties worked at IGA, and were both successful in their own right, as employees there. Impressively, Mother won an award in 2022 for being one of the top produce managers in the United States.

Post-dissolution, the parties continued to work together at IGA until April 2023. Mother’s testimony is that she felt forced to leave her employment at IGA after an argument between the parties. The parties tell very different versions of what occurred during and after the argument.

Mother’s testimony is that she left IGA as a result of how she was being treated and that Father threw “things” at her and physically grabbed her arm to prevent her from leaving the

room during an argument. Mother further testified that she was told she was no longer wanted at IGA, and that she no longer felt safe working in that environment after the argument.

Father vehemently denies that he ever threw anything at Mother and testified that, while he may have grabbed at Mother's arm, he did so to prevent her from leaving in the middle of a conversation and did not physically hurt her in any way. Father claims that IGA relied heavily on Mother's work ethic and expertise. Father claims that sometime after the argument, the parties agreed on certain "boundaries," and that he was very surprised when Mother quit IGA via email. Further, Father's testimony is that Mother's timing in deciding to leave IGA was strategic insofar as she gave her notice shortly after she received her bonus payment.

The parties had worked together at IGA for many years and certainly contemplated working together post-divorce. Further, the court finds that IGA relied on Mother continuing to work at IGA, as she had done successfully for quite some time. While the situation may not have been ideal, the court is not persuaded by Mother's argument that she was "forced" to quit. The court finds the timing of Mother's departure to be calculated insofar as she quit IGA so shortly after having received her yearly bonus.

Mother testified that upon leaving IGA she "immediately" began looking for employment shortly after giving her notice. Despite her testimony, Mother did not present any evidence of job searches or applications prior to September 2023 (despite her having left IGA in April 2023). See Defendant's Exhibit A, "Plaintiff's Job Search Documents 9/10/23 – 11/10/23. The applications submitted were all for banking positions. When questioned as to why she did not apply to any grocery stores, Mother testified that she applied for one grocery store position at Price Chopper, but that she "never heard back."

The court heard a lot of testimony pertaining to an impending renovation at IGA. The parties agree that there were many conversations pertaining to a possible renovation of the store that took place, both before and after the parties' dissolution. The renovation will increase and improve the produce section at IGA and will include an expansion of the parking lot. Father's credible testimony is that the renovation plans are moving forward, albeit slowly, with some delays due to zoning issues.

Mother's financial affidavit (Docket Entry #188) reflects that she is now self-employed at Quiet River Capital, LLC ("Quiet River"). Mother testified that she decided to open her own business due to her inability to find employment elsewhere after she left IGA. Quiet River is a retail establishment that will sell fresh foods, produce and meat when it opens. Mother testified that she has invested approximately \$200,000 and is hoping to be ready to open Quiet River's doors for business in May 2024.

Father's current financial affidavit (Docket Entry #172) reflects a gross weekly income of \$2350 which is significantly less than Father's previously filed financial affidavits.¹ Father's credible testimony is that he will not earn any bonus income for fiscal year 2024 due in part to that money being necessary as a cash downpayment towards the IGA renovation. Father testified there have been other times when he did not receive a bonus payment from IGA. For example, in 2019 neither Father nor Mother received bonus income as they used the funds that would have been received by way of a bonus to fund a remodel of IGA.

¹ See the defendant's Financial Affidavit dated August 31, 2023 (Docket Entry #130), which reflects \$8261 in gross weekly income, and the defendant's Financial Affidavit dated July 25, 2022 (Docket Entry #104), which reflects \$5600 in gross weekly income.

The parties agree that since Mother's departure from IGA, Father has made voluntary child support payments to her totaling \$12,006. See Defendant's Exhibit E, "Summary of Defendant's Voluntary Child Support Payments."

Caselaw and Discussion

With regard to the motion to modify child support, the court finds by a fair preponderance of the evidence that there has been a substantial change in circumstances since the last court order. At the time of judgment, both parties were employed at IGA, earning the same income. This, coupled by the parties' shared parenting plan, formed the basis for the parties' deviation from the presumptive amount of child support.

Having found a substantial change in circumstances warranting a modification of the existing child support order, the court must determine the presumptive amount under the current circumstances and determine what child support order is fair and equitable. General Statutes § 46b-84 (a) provides in relevant part: "[T]he parents of a minor child . . . shall maintain the child according to their respective abilities, if the child is in need of maintenance." Additionally, § 46b-84 (b) provides in relevant part: "[T]he 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."

"In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child." General Statutes § 46b-84 (d).

“While there is no fixed standard for the determination of an individual’s earning capacity”; (internal quotation marks omitted) *Dees v. Dees*, 92 Conn. App. 812, 816, 887 A.2d 429 (2006); “[e]arning capacity is not an amount which a person can theoretically earn, nor is it confined to actual income, but rather it is an amount which a person can realistically be expected to earn considering such things as his vocational skills, employability, age and health.” *Lucy v. Lucy*, 183 Conn. 230, 234, 439 A.2d 302 (1981). Additionally, a court may consider the party’s own testimony about what he is capable of earning. See, e.g., *McKay v. McKay*, 174 Conn. 1, 2, 381 A.2d 527 (1977) (where the court considered the defendant’s individual testimony as to his personal earning capacity).

In reviewing the financial affidavits submitted by the parties, the court finds that the presumptive child support amount is \$233 per week for one minor child pursuant to the Guidelines. Docket Entry #180. However, the court finds that it would be inappropriate or inequitable to order the presumptive amount, based upon the earning capacity of Mother, and therefore applies a deviation criterion to order an appropriate amount of support. See, e.g., *Fox v. Fox*, 152 Conn. App. 611, 99 A.3d 1206, cert. denied, 314 Conn. 945, 103 A.3d 977 (2014); *Righi v. Righi*, 172 Conn. App. 427, 435, 160 A.3d 1094 (2017). Accordingly, the court deviates from the presumptive child support amount based upon Mother’s earning capacity. Regs., Conn. State Agencies § 46b-215c-5c (b) (1) (B).

The court must determine a “specific dollar amount” of the party’s earning capacity. See *Tanzman v. Meurer*, 309 Conn. 105, 110, 70 A.3d 13 (2013). Based upon the credible evidence presented, including but not limited to, Mother’s degree in business economics and past work experience, the court finds that Mother has an income earning capacity of \$60,000.

Accordingly, the court determines that, pursuant to the Guidelines (Docket Entry #___), the amount of child support payable by Father to Mother for two children is \$323 per week based upon Mother's capacity to earn a net weekly income of \$734, and Father's actual net weekly income of \$1334. Pursuant to the Guidelines (Docket Entry #___), Father's child support obligation for one child is \$210 per week.

Post-Secondary Education

In their Separation Agreement, the parties agreed to share in the post-majority educational expenses of the children pursuant to General Statutes § 46b-56c and asked the court to retain jurisdiction to enter a post-majority support order should they be unable to agree. Docket Entry #111, Article IV. In July 2023, Father filed a post-judgment motion seeking an educational support order for the parties' daughter, Allie, who began attending her first year at Northeastern University ("Northeastern") in the fall of 2023. Mother testified that the parties had previously discussed how they were going to pay for the children's college education and that they had mutually agreed to use the funds contained in one of IGA's business accounts. Father's credible testimony is that, while the parties had discussed using the funds in the IGA business account for college, that plan changed when they agreed to use them for the renovation.

Article VIII, paragraph J of the parties' Separation Agreement provides: "The parties shall maintain the current 529 plans as shown on their respective financial affidavits. Neither party shall withdraw from either account without the written consent of the other."

Caselaw and Discussion

In entering an educational support order, the court "shall consider all relevant circumstances, including: (1) The parents' income, assets and other obligations, including obligations to other dependents; (2) the child's need for support to attend an institution of higher

education or private [occupational] career school considering the child's assets and the child's ability to earn income; (3) the availability of financial aid from other sources, including grants and loans; (4) the reasonableness of the higher education to be funded considering the child's academic record and the financial resources available; (5) the child's preparation for, aptitude for and commitment to higher education; and (6) evidence, if any, of the institution of higher education or private [occupational] career school the child would attend." General Statutes § 46b-56c (c).

To qualify for payments due under an educational support order, the child must (1) enroll in an accredited institution of higher education or private [occupational] career school, as defined in section 10a-22a, [as amended by Public Acts 2022, No. 22-123], (2) actively pursue a course of study commensurate with the child's vocational goals that constitutes at least one-half the course load determined by that institution or school to constitute full-time enrollment, (3) maintain good academic standing in accordance with the rules of the institution or school, and (4) make available all academic records to both parents during the term of the order. General Statutes § 46b-56c (f).

At the time of judgment, both parties' financial affidavits reflected the same information pertaining to two 529 accounts with \$51,609 in Allie's account, and \$54,312 in Devin's account. The parties agreed and withdrew funds to cover Allie's tuition for her first year at Northeastern. The parties do not agree upon how to pay for Allie's tuition going forward.

Mother's current financial affidavit (Docket Entry #188) reflects the following balances: \$9783 in a Capital One checking account, \$118,427 in a Capital One savings account and \$125,705 in an Ally bank account. Mother testified that the Ally account is a business account

that she solely funded. Mother continues to reside in the marital residence, with the children. Mother's financial affidavit reflects \$723,632 as the total cash value of her assets.

Father purchased a home in December 2023, and, through his credible testimony, admitted that IGA continues to pay for some of his living expenses, such as the cost of groceries for his household, fuel for his motor vehicles and heating oil for his home. Father's financial affidavit reflects \$620,318 as the total cash value of his assets.

ORDERS:

After careful consideration of the evidence presented, including but not limited to the credible testimony of the parties, Connecticut case law and General Statutes §§ 46b-56c and 46b-86, the court finds the following orders to be fair and equitable, and in the best interest of the minor child under the totality of the circumstances.

1. Father shall pay the presumptive child support pursuant to the Guidelines (Docket Entry #190) for two children for the period of May 12, 2023 (date of service of Mother's motion for modification, Docket Entry #115) to June 9, 2023, in the amount of \$323 per week, totaling \$1292.
2. Father shall pay the presumptive child support amount pursuant to the Guidelines (Docket Entry #189) for one child effective June 10, 2023, in the amount of \$210 per week. The total from June 10, 2023 through April 13, 2024 is \$9870 (47 weeks x \$210 = \$9870).
3. Father's voluntary child support payments, totaling \$12,006 shall be credited against the above amounts. Accordingly, the retroactive arrearage is deemed satisfied.
4. Effective as of the date of this order, Father shall pay Mother 15 percent (15%) of his net income on income in excess of \$96,200 gross per year as supplemental child

support. Father shall pay Mother within one (1) week of his receipt of such income, providing copies of the pay statement reflecting the gross and net amounts.

5. Commencing with Allie's semester abroad and each succeeding academic year, each party shall contribute to the statutory educational expenses incurred by Allie, including books, room and board, net after any scholarship awards or grants in aid, in a ratio of 30 percent by Mother and 70 percent by Father. The foregoing notwithstanding, the combined annual contribution per academic year of the parties shall not exceed the ceiling set forth in General Statutes § 46b-56c (f).

By the court,



Nascimento, J.