SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5240-15T2

LAMONT D. STEPHENS,

Plaintiff-Respondent,

v.

IVONNE PICKETT,

Defendant-Appellant.

Argued November 27, 2017 – Decided December 14, 2017

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Family Division, Chancery Part, Burlington County, Docket No. FD-03-0033-08.

Mark J. Molz argued the cause for appellant.

Lamont Stephens, respondent, argued the cause pro se.

PER CURIAM

Defendant Ivonne Pickett (mother) appeals from a June 15, 2016 order reducing plaintiff Lamont D. Stephens' (father) child support obligation from $230 per week to $105 per week. We reverse.

I

We glean the following from the record. The parties are the parents of twins, presently twelve years of age. The mother is the primary caretaker. Before 2016, the court entered an order directing the father to pay the mother $230 per week in child support. Neither party provided the date or a copy of this order.

On May 13, 2016, the father was laid off from his job as a video editor and, on or about the same day, filed a complaint under the non-dissolution or FD docket[1] requesting a reduction in child support because of what he perceived to be a change in his circumstances. There is a question of fact whether the court staff mailed to the mother not only a copy of the father's complaint, but also the attachments to the complaint. The attachments consisted of a copy of the father's case information statement (CIS), 2015 federal and state income tax returns, and three paystubs.

In a certification submitted in support of his request to reduce child support, the father stated he worked as a personal

[1] The parties were never married to each other. The non-dissolution or FD docket provides a mechanism for parents who never were married to each other to obtain relief from the court on matters pertaining to custody, parenting time, paternity, and child support. R.K. v. D.L., 434 N.J. Super. 113, 131 (App. Div. 2014).

trainer in 2015 but, because business was slow, earned only $20,000 that year. Toward the end of November, he obtained a position as a video editor, earning $15 per hour or $31,200 per year, although we note one of the paystubs he attached to his complaint indicated he was earning $38,340.64 per year. The father stated he has a Bachelor of Fine Arts degree, but claimed he was not suitable for any jobs outside of -- and there were few jobs available within -- the fine arts fields.

The mother did not submit a certification but appeared for the hearing. She testified she did not receive either the father's complaint or the documents that had been attached to it. She explained that, before the hearing, she went to the courthouse to get a copy of these documents, but was informed the file could not be located. At the hearing, she requested an adjournment so she could obtain such documents and prepare for the hearing, but the court denied her request.

During the hearing, the court asked the father if he were "capable" of earning $500 per week. He admitted he was, but no evidence about the father's ability to earn income or what he had been earning when previously ordered to pay $230 per week was adduced. Without providing any analysis, the court then imputed $500 per week in income to the father. The court used this latter figure and the mother's actual income to calculate

the father's child support obligation under the Child Support Guidelines, and found his obligation to pay child support was $105 per week.

II

On appeal, the mother's principal argument is the father failed to show he experienced a change of circumstance to warrant reducing his child support obligation below $230 per week. She also contends the court erred by failing to adjourn the hearing so she could obtain the subject documents to properly prepare for the hearing.

When we "review[] decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). Child support orders are subject to modification pursuant to N.J.S.A. 2A:34-23 upon a showing of changed circumstances. See Lepis v. Lepis, 83 N.J. 139, 157 (1980). The party seeking a modification bears the burden of showing there has been a change of circumstance warranting an alteration of the prior order. Id. at 157.

Significant changes in the income or earning capacity of either parent may result in a finding of changed circumstances. Colca v. Anson, 413 N.J. Super. 405, 415-16 (App. Div. 2010).

However, "[c]ourts have consistently rejected requests for modification based on circumstances which are only temporary . . . ." Lepis, 83 N.J. at 151 (1980) (citing Bonanno v. Bonanno, 4 N.J. 268, 275 (1950)). Current earnings have never been viewed as "the sole criterion [upon which] to establish a party's obligation for support." Weitzman v. Weitzman, 228 N.J. Super. 346, 354 (App. Div. 1988) (internal citation omitted).

"[A] court 'has every right to appraise realistically [a parent's] potential earning power.'" Ibid. (quoting Mowery v. Mowery, 38 N.J. Super. 92, 102 (App. Div. 1955). An obligor cannot successfully show a change in circumstances due to a loss in income unless he also demonstrates he made a concerted effort to find work at comparable pay. Storey v. Storey, 373 N.J. Super. 464, 472 (App. Div. 2004); Dorfman v. Dorfman, 315 N.J. Super. 511, 517 (App. Div. 1998).

In addition, "the changed-circumstances determination must be made by comparing the parties' financial circumstances at the time the motion for relief is made with the circumstances which formed the basis for the last order fixing support obligations." Beck v. Beck, 239 N.J. Super. 183, 190 (App. Div. 1990). Ascertaining whether there has been a change in circumstances "necessarily entails knowing the starting point before the change, that is, the point from which the change can be

measured." Foust v. Glaser, 340 N.J. Super. 312, 316 (App. Div. 2001).

Applying these principles here, we conclude the judge mistakenly exercised his discretion when he granted the father's motion to modify his support obligations. First, the judge failed to grant the mother an adjournment to provide her an opportunity to examine the father's financial documents and prepare for the hearing. An adjournment would not have prejudiced the father and would have given the mother the ability to review the subject documents. Second, we note the judge did not make any findings of fact and conclusions of law as required by Rule 1:7-4(a).

Third, and most important, the father did not make a prima facie showing of changed circumstances. At the outset, we note he failed to provide a copy of the order directing he pay $230 per week and evidence of what he had been earning when such order was entered. Although there appears to be no question he was laid off in May 2016, there is no evidence of the effort he made to find another position in which he could earn the same or close to what he had been earning at the time the previous order was entered.

Instead, as soon as he was laid off, the father immediately filed a motion to reduce his child support obligation. There

was no reason to conclude his circumstances were anything but temporary.

Because of the deficiencies in his proofs, the court erred when it reduced the father's child support obligation. The father failed to establish there was a change in circumstances as a result of losing his job to justify a reduction in his child support obligation. Storey, 373 N.J. Super. at 472. Accordingly, we reverse the June 15, 2016 order. The father is not, however, precluded from submitting another application to reduce child support.

Reversed.