SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2844-20

DAVID WICKENDEN,

Plaintiff-Appellant,

v.

EVELIEN ZONNEVELD,

Defendant-Respondent.

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Submitted May 16, 2022 – Decided May 26, 2022

Before Judges Sabatino and Mayer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FD-02-0935-20.

Fox Rothschild, LLP, attorneys for appellant (Adam Wiseberg, on the brief).

Moskowitz Law Group, LLC, attorneys for respondent (Eilish M. McLoughlin, on the brief).

PER CURIAM

Plaintiff David Wickenden ("the father"), who shares a single child with defendant Evelien Zonneveld ("the mother"), contests the Family Part's April 30, 2021 order[1] calculating child support at $275 per week, representing $240 in child support and $35 in arrears. That calculation is based on a weekly income of $3,760 imputed by the court to the father.

We vacate, without prejudice, the imputed income figure adopted by the court in the absence of clearer evidence the father has earned that level of income on a sustained basis. We remand for necessary further development of the record and reconsideration of the imputed amount.

I.

The record before us evinces an approximately six-year history of the parties' conflicts over several aspects of co-parenting the sole minor child they share, which we need not delve into.

The parties did not marry. The father is a former self-employed physical therapist based in New York City; he contends the COVID-19 pandemic forced him to accept less lucrative employment as a merchant marine. He further asserts that while his peak annual income since 2014 was approximately $99,000, he has not consistently earned at that level, and is currently earning

[1] A second order issued on May 3, 2021 amended a clerical error.

approximately $60,000 in his new occupation. In 2020—the last year for which any financial information was provided by either party—the mother earned, according to her Case Information Statement ("CIS"), $214,188 as an employee of a financial services firm. The father continues to live in New York City, while the mother lives with their child in New Jersey.

The father's child support obligation was originally set at $550 per week by a December 2015 Family Part court order in Hudson County on the basis of his 2014 federal income tax return. Specifically, the 2015 court order stated that the father's 2014 tax return reflected an annual income of approximately $195,000, taking into account both the $130,533 sum reflected as "total income" and adding to it a $65,000 deduction.

Less than a year later, in August 2016, the parties entered a consent judgment by which the father agreed to provide a lesser sum of $425 in weekly child support payments payable through Probation. The parties agree that figure was above the Child Support Guidelines ("Guidelines")[2] amount, particularly considering the father's 2015 income of $52,284 reported in his federal income tax return for that year.

[2] Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A (2022).

In February 2020, the father moved for a reduction of the child support amount he assented to in the consent judgment. In his supporting certification, the father stated he was "drastically overpaying support" considering his 2015 through 2018 earnings, reflected on his submitted federal income tax returns.[3] The following month, the trial court presiding over that motion found the father had failed "to make a prima facie showing by credible competent evidence of a change of circumstances from the time the child support obligation he seeks to modify was calculated (per the 8-1-2016 Consent Judgment) to the present."

In September 2020, the father again moved to reduce his child support obligation on the basis of alleged changed circumstances. The father first certified that the income level indicated on his 2014 income tax return relied upon for the purposes of both the December 2015 court order and, to some extent, the parties' 2016 consent judgment, was inaccurate. To that end, he submitted a copy of an amended 2014 federal income tax return filed in or around December 2015 indicating a total income of $99,012 for that year. Aside from stressing the lower income levels reflected on his tax returns since 2014, the father emphasized that childcare costs were an excessive portion of his child

[3] Chronologically, the "total income" reflected on the father's federal income tax returns for 2015 through 2018 are: (1) in 2015, $52,284; (2) in 2016, $88,058; (3) in 2017, $99,032; and (4) in 2018, (-)$7,607.

support obligation under both the 2015 court order and the parties' consent judgment. He pointed out the child had long aged out of needing childcare.

On November 12, 2020, following a brief oral argument, the trial court reduced the father's child support obligation from the amount reflected in a November 2015 Guidelines worksheet. That 2015 worksheet was purportedly used by the Family Part to reach the December 2015 court ordered sum. Accepting the father's contention that childcare was no longer needed, the court set the father's child support obligation as $240 weekly. Specifically, the court subtracted the $366 weekly sum indicated as work-related childcare from the $937 weekly total child support owed by the parties. $240 represented the father's 43% share of that total child support obligation. It is unclear why the November 2015 worksheet, and not the parties' 2016 consent judgment, was used as the basis for the father's motion for a reduction.

Once the parties failed to reach an agreement to replace the court's interim child support order through mediation, the court issued a further order and appended "Explanation" on April 30, 2021, which the father now appeals. The court's written order affirmed the interim order by setting the father's child support obligation at $275 per week, representing $240 in child support and $35 in arrears. The court indicated that the father owes arrears of $10,737.14 as of

April 2021. The Guidelines worksheet attached to the court's written order reflects a weekly gross taxable income of $3,760 imputed to the father.

In determining that the imputation of $3,760 in weekly gross income to the father was reasonable, the trial court stated that "[a]s per NJKiDS, child support guidelines were run by the Hudson County court in April 2019, listing [the father's] gross income as $3,760.00 weekly. Under the totality of circumstances, [it] will utilize the same income[.]" (Emphasis added). Significantly, that April 2019 form the Bergen County judge identified as being issued in Hudson County was not among either parties' submissions or appended to the trial court's order. It was also not discussed at the sole motion hearing before the trial court on November 12, 2020, during which only the 2015 worksheet was referenced.

The court rejected the father's arguments for further reducing his child support obligation. The court emphasized that his COVID-19 related income fluctuations are "temporary," and that the father "voluntarily" switched into a less lucrative profession, neither of which indicate a change of circumstances warranting a modification under Lepis v. Lepis, 83 N.J. 139 (1980).

The court also expressed doubts about the father's reported income of $0 for 2020 reflected on his CIS, emphasizing that the father "list[ed] $5,789.00

[in] monthly expenses, an $826,000.00 IRA, a $6,700.00 Roth IRA, [and] almost one million dollars in assets."

On appeal, the father stresses that he has never earned anywhere near a $195,000 annual income, as indicated in his tax returns for 2014 (as amended) through 2018. He further emphasizes that he has been forced to accept a significant income reduction due to COVID-19. Lastly, the father highlights that the April 2019 Guidelines worksheet discussed by the court, which appears to have largely supported the level of income imputed to him, was never provided or in possession of either party.

The mother, in turn, argues that the court's reliance on the purported 2019 worksheet amounted to harmless error, because the father's 2014 income tax return, the 2015 court order, and the 2016 consent judgment all support the level of income the court ultimately imputed. The mother also casts doubt on the father's supposed income of $0 in 2020, in light of his reported monthly expenses.

II.

Our scope of review in this Family Part matter is limited. We will not disturb the trial court's findings unless they are demonstrated to lack support in the record with substantial, credible evidence. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). Given the Family Part's special expertise, appellate courts must accord particular deference to fact-finding in family cases, and to the conclusions that logically flow from those findings. Cesare v. Cesare, 154 N.J. 394, 412-13 (1998).

The decision to impute income is one such question of fact ordinarily left to the trial court's sound discretion. See Tash v. Tash, 353 N.J. Super. 94, 99-100 (App. Div. 2002). The specified amount imputed to a party under the trial court's calculation will not be overturned, unless the underlying findings are inconsistent with or unsupported by competent evidence. Overbay v. Overbay, 376 N.J. Super. 99, 106–07 (App. Div. 2005) (citing Storey v. Storey, 373 N.J. Super. 464, 474–75 (App. Div. 2004)).

The pivotal issue here concerns the propriety of the amount of income imputed to the father. The Family Part may impute income where a parent is voluntarily underemployed or unemployed. Though the father contends that the COVID-19 pandemic has forced him into accepting less lucrative employment

as a merchant marine—seemingly contesting whether he is "voluntarily" underemployed—he does not dispute the court's decision to impute some level of income to him.

Once the court has determined that income must be imputed, that income level "must be 'based on a realistic assessment of [a parent's] capacity to earn'" because "the underpinnings for a support award is the obligor's ability to pay." Ibrahim v. Aziz, 402 N.J. Super. 205, 213 (App. Div. 2008) (quoting Storey, 373 N.J. Super. at 474) (emphasis added).

We appreciate that the father waived a plenary hearing in this case despite disputes over his actual 2014 income, and his income since 2018. Nevertheless, the imputation of $3,760 weekly income—or $195,520 per year—lacks a sufficient evidential basis in the present record to be a "realistic assessment" of his earnings capacity. Even if we were to reject the father's amended 2014 tax return income figure in favor of the $195,000 sum adopted by the Family Part in 2015, it appears contrary to a "realistic assessment" to impute that now eight-year-old figure considering the father's reported earnings since, which have never exceeded the $100,000 per year threshold. Moreover, the $195,000 figure predates the father's first motion for a reduction and the COVID-19 pandemic by six years.

We also hesitate to affirm this high imputed sum considering apparent inconsistencies in the record. Namely, it appears that the father's current child support obligation of $240 per week was reached through two distinct calculations: the first addressed in the trial court's interim November 2020 order, and the second in the court's April 2021 written order. The November 2020 order referenced a 2015 Guidelines worksheet in reaching that sum, rather than the parties' more recent 2016 consent judgment, which formed the basis of the father's child support obligation at the time he moved for a reduction. The April 2021 order then referenced an April 2019 Guidelines worksheet, which, as we have noted, is not in the record before us, but apparently set the father's weekly income at $3,760.

Our review of this matter is further hindered by the incomplete and slightly contradicting rationales in the court's statement of reasons, the required content of which is mandated under Rule 1:7-4. See Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2022) (emphasizing that the Rule "requires findings to be made on all motions decided by written orders appealable as of right[,]" and the "critical importance of that function"); see also Vartenissian v. Food Haulers, Inc., 193 N.J. Super. 603, 611-12 (App. Div. 2004). We appreciate the motion judge did provide a written "Explanation" of

the child support ruling, but for the reasons we have stated, it appears to be incomplete and not sufficiently substantiated by the present record.

Consequently, we remand for reconsideration of the child support amount, based on a fuller record to be developed. In the interim, the $240 weekly figure shall remain unaltered, without prejudice, until such time as the trial court examines the matter anew. On remand, the trial court shall have the discretion to require updated and any further documentation from the parties, as well as the discretion—whether requested or not—to conduct a plenary hearing and make credibility findings concerning the father's actual and potential income.

Vacated and remanded. We do not retain jurisdiction.