

EXHIBIT 8D

Memorandum of Decision

March 5, 2018. Heller, J. Docket entry 121.00.

Excerpt: pages 1, 6, 7, 10, 12 and 13 of 14.

Complete document available on request.

SUPERIOR COURT
JUDICIAL DISTRICT
2018 MAR -5 P 1:30

DOCKET NO. : FST-FA-16-5015729-S SUPERIOR COURT
KATE B. CYGANOVICH JUDICIAL DISTRICT
v. OF STAMFORD/NORWALK
THOMAS J. CYGANOVICH AT STAMFORD
MARCH 5, 2018

MEMORANDUM OF DECISION ON MOTIONS FOR MODIFICATION,
POST-JUDGMENT AND MOTION FOR CONTEMPT, POST-JUDGMENT

The plaintiff Kate B. Cyganovich and the defendant Thomas J. Cyganovich were divorced on June 30, 2016. The dissolution judgment (*Novack, J.T.R.*) (#109.00; #110.55) incorporated by reference the parties' separation agreement, dated June 22, 2016 and filed June 23, 2016 (the June 2016 separation agreement) (#108.00). On September 14, 2017, the defendant filed a motion for modification, post-judgment (#114.00), in which he seeks a reduction in the amount of child support that he is obligated to pay due to a substantial change in the financial circumstances of the parties. On September 27, 2017, the plaintiff filed a motion for modification, post-judgment (#115.00), to modify the terms of the dissolution judgment with respect to the allocation of the health insurance premiums paid by the parties for their minor child, Scarlett. The plaintiff also filed a motion for contempt, post-judgment (#116.00) that day, in which she seeks an order holding the defendant in contempt for failing to pay any of his 2017 bonus to her as additional child support pursuant to the June 2016 separation agreement.

The parties, both of whom were representing themselves, were before the court on November 6, 2017. The court heard testimony from each party, reviewed the exhibits that were admitted into evidence and the child support guidelines worksheet prepared by Family Services, took judicial notice of the contents of the court file, and reserved decision at that time. For the reasons set forth below, the defendant's motion for modification, post-judgment, is

121

deviation; or (iii) both parents have substantially equal income.” Regs., Conn. State Agencies, §46b-215a-5c(b)(6)(A). The evidence before the court establishes that the weekly expenses of the plaintiff, the parent with the lower net weekly income, have decreased by more than \$500, while the weekly expenses of the defendant, the parent with the higher net weekly income, have increased by almost \$350 since the date of entry of the dissolution judgment. Therefore, the court finds that a deviation from the presumptive weekly child support obligation is appropriate based on shared physical custody.

The court has recalculated the parties’ presumptive weekly child support obligation to reflect the changes in the federal tax law since the November 6, 2017 hearing and to include the amounts that the parties pay for health insurance.² According to the court’s calculations, the presumptive weekly child support obligation is \$425, of which the plaintiff is responsible for 38 percent, or \$161 per week, and the defendant is responsible for 62 percent, or \$264 per week. The defendant’s monthly child support obligation under the guidelines would be \$1,144 per month, absent a deviation.

If the court were to determine the defendant’s child support obligation based on the child support guidelines worksheet, the court would find that the presumptive amount is inequitable in view of the parties’ shared custody arrangement, and, therefore, a deviation is warranted. See Regs., Conn. State Agencies §§46b-215a-5c(b)(1)(A) and (D). The court orders that the defendant pay child support in the amount of \$225 per week or \$975 per month. This amount represents a 14.77 percent deviation from the basic child support obligation according to the child support guidelines worksheet prepared by the court. Under General Statutes §46b-86(a), “[t]here shall be a rebuttable presumption that any deviation of less than

² The court has made the child support guidelines worksheet a court exhibit. The worksheet reflects the plaintiff as the custodial parent for purposes of the calculations.

fifteen per cent from the child support guidelines is not substantial and any deviation of fifteen per cent or more from the guidelines is substantial.” General Statutes §46b-86(a). Under the child support guidelines worksheet prepared by the court, the deviation is not substantial.

The defendant’s motion for modification, post-judgment was served on the plaintiff on September 29, 2017. The defendant asks that the reduction in his child support obligation be retroactive to that date. The court grants retroactivity to the first day of the month following the date of service of the motion – or October 1, 2017 – in accordance with General Statutes §46b-86.

Therefore, the order modifying the amount of child support to be paid by the defendant to the plaintiff shall be retroactive to October 1, 2017. The defendant shall be entitled to a credit for the amount of child support that he overpaid in the total amount of \$1,896 (\$316 per month for six months).³

The defendant also asks that the parties’ respective obligations to pay Scarlett’s unreimbursed medical and child care expenses also be adjusted to reflect their shared custody arrangement. According to the child support guidelines worksheet prepared by the court, the plaintiff is responsible for 46 percent of Scarlett’s unreimbursed medical and child care expenses, and the defendant is responsible for 54 percent. In view of the parties’ shared physical custody arrangement, the court finds that a deviation from the guidelines is warranted. The parties shall share equally the cost of Scarlett’s unreimbursed medical and child care expenses incurred on and after October 1, 2017.

As neither party provided any evidence regarding the amounts paid for these expenses, the court will leave to them to determine the amount of the credit to which the defendant is

³ The court’s calculation assumes that the defendant has already paid child support for the month of March 2018.

reasonable basis for a difference of opinion. . . . The proper inquiry focuses on whether the agreement on its face is reasonably susceptible of more than one interpretation. . . . It must be noted, however, that the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity. . . .” (Internal quotation marks omitted.) *Fazio v. Fazio*, 162 Conn. App. 236, 244-45, 131 A.3d 1162, cert. denied, 320 Conn. 922, 132 A.3d 1095 (2016).

With these principles in mind, the court turns to paragraph 4(b) of the June 2016 separation agreement, which provides that “the Husband shall pay the Wife each year, as additional child support, 15% of an amount equal to (i) his net annual bonus income, if any, less (ii) the Wife’s net annual bonus income, if any. The Husband currently receives his bonus in April for the preceding year and Wife receives her bonus in December. Each year in April when the parties exchange information for the preceding year, the parties shall determine the amount of the additional child support, and the Husband shall pay such amount to the Wife on or before April 30th of such year.” The court finds this language to be clear and unambiguous. The defendant is obligated to pay to the plaintiff 15 percent of the difference between his net annual bonus and the plaintiff’s net annual bonus. Whether the plaintiff earned additional income from a second job is immaterial. As the plaintiff did not receive a bonus in 2016, the defendant owed her 15 percent of the net annual bonus that he received for 2016, payable on or before April 30, 2017.

“Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense.” (Citation omitted; internal quotation marks omitted.) *Wilson v. Cohen*, 222 Conn. 591, 596 n.5, 610 A.2d 1177 (1992). “Civil contempt is committed when a

The court finds by clear and convincing evidence that the defendant had notice of the June 2016 separation agreement, and that the provisions of the June 2016 separation agreement are clear and unambiguous. The plaintiff has failed to meet her burden, however, of establishing by clear and convincing evidence that the defendant wilfully violated paragraph 4(b) of the June 2016 separation agreement when he failed to pay her 15 percent of his net annual bonus for 2016. The defendant's good faith disagreement with the plaintiff as to his obligation under that provision of the June 2016 separation agreement does not rise to the level of a wilful violation of an order of the court.

Although the court does not hold the defendant in contempt, the court finds that the defendant was obligated to pay to the plaintiff 15 percent of his net annual bonus for 2016, in the amount of \$2,813.93, as additional child support pursuant to paragraph 4(b) of the June 2016 separation agreement. This payment was due in April 2017. The defendant may set off against this amount (i) the \$1,896 credit to which he is entitled for the child support that he has overpaid since October 2017, and (ii) any additional credit resulting from the reallocation of Scarlett's unreimbursed medical and child care expenses. He shall pay the balance to the plaintiff in ten equal monthly installments, commencing April 1, 2018.

V

The court has fully considered the applicable statutory criteria and case law, the evidence, the demeanor and credibility of the parties, 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.

1. The defendant's motion for modification, post-judgment (#114.00) is hereby granted. It is further ordered as follows:

a. Effective October 1, 2017, the defendant shall pay child support to the plaintiff in the amount of defendant in the amount of \$225 per week, or \$975 per month.

b. Effective October 1, 2017, the parties shall share equally all unreimbursed medical and child care expenses for Scarlett.

c. These changes represent a deviation from the presumptive obligations under the child support guidelines on the basis of the parties' shared physical custody arrangement.

d. Because the modification is retroactive to October 1, 2017, the defendant is entitled to a credit of \$1,896 for the amount of child support that he overpaid from that date to the date of this memorandum of decision.

e. The defendant is also entitled to a credit for Scarlett's unreimbursed medical and child care expenses that he overpaid from October 1, 2017 to the date of this memorandum of decision.

2. The plaintiff's motion for modification, post-judgment (#115.00) is hereby denied.

3. The plaintiff's motion for contempt, post-judgment (#116.00) is hereby denied to the extent that it seeks an order holding the defendant in contempt but not as to the defendant's obligation to make the payment to which the plaintiff is entitled. It is further ordered as follows:

a. The defendant shall pay to the plaintiff 15 percent of his net annual bonus for 2016, in the amount of \$2,813.93, as additional child support pursuant to paragraph 4(b) of the June 2016 separation agreement.