THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2017-0050, In the Matter of Kathryn Gosselin and Heath Gosselin, the court on December 13, 2017, issued the following order:

The petitioner, Kathryn Page f/k/a Kathryn Gosselin (mother), appeals an order of the Circuit Court (Tenney, J.) modifying the child support obligation of the respondent, Heath Gosselin (father). She contends that the trial court erred by: (1) ordering the father to pay zero support, retroactive to the date of his motion to modify; (2) ordering her to reimburse the father for all the child support he paid since he moved for modification, without considering the child-related expenses she had paid during that time; (3) not considering the child's best interest, see RSA 458-C:5, I (Supp. 2016); (4) basing its decision upon contributions by her domestic partner without determining when those contributions began; and (5) stating that the order was "both temporary and final." We vacate and remand.

In this case, the father moved to modify his support obligation in June 2012. Following a hearing in July 2014, the trial court found, pursuant to RSA 458-C:5, I(j), that a 25 percent downward deviation from guideline support was "necessary to avoid a confiscatory order." The father appealed, and we vacated and remanded the trial court's order because it had transposed the parties' incomes on the child support guideline worksheet. We noted that the trial court had made no findings regarding the father's payment of the child's medical insurance premiums or the mother's domestic partner's payments on her mortgage.

Upon remand, the trial court held an evidentiary hearing in May 2016. The child became emancipated in June 2016. See RSA 461-A:14, IV (Supp. 2016). In November 2016, the trial court issued an order finding that the father's monthly guideline support was $529. However, pursuant to RSA 458-C:5, I(j), it ordered that he pay zero child support, retroactive to June 2012, the date of his motion to modify. See RSA 458-C:7, II (Supp. 2016). Thus, the mother was required to reimburse him for all child support he paid after that date. See RSA 458-C:7, III (Supp. 2016). The mother filed this appeal.

We first address whether the trial court erred by deviating from the child support guidelines. We will uphold an order on a motion to modify a support obligation absent an unsustainable exercise of discretion. In the Matter of Doherty & Doherty, 168 N.H. 694, 696 (2016). We sustain the findings and

rulings of the trial court unless they are lacking in evidentiary support or tainted by error of law. Id.

New Hampshire's child support guidelines shall be applied in all child support cases, including any order modifying a support order. Matter of Hampers & Hampers, 166 N.H. 422, 444 (2014). The guidelines, codified in RSA chapter 458-C (2004 & Supp. 2016), establish a uniform system to determine a parent's child support obligation. In the Matter of Laura & Scott, 161 N.H. 333, 335 (2010). Their purposes include not only establishing uniformity in determining child support obligations, but reducing the economic consequences of divorce on children by ensuring that parents share in their children's support according to the relative percentages of their incomes. Id.; RSA 458-C:1 (Supp. 2016).

The amount of child support calculated pursuant to the guidelines is presumptively correct. Laura, 161 N.H. at 335; RSA 458-C:4, II (2004). This presumption is rebuttable, however, and may be overcome by a preponderance of evidence that applying the guidelines would be "unjust or inappropriate" due to a "special circumstance." Laura, 161 N.H. at 335-36; RSA 458-C:4, II; RSA 458-C:5. The mere fact that special circumstances exist, however, does not mandate an adjustment to a parent's child support obligations. In the Matter of Folley & Folley, 149 N.H. 393, 395 (2003).

When deciding whether to deviate from the support guidelines, the trial court must consider any special circumstances raised by the parties "in light of the best interests of the child." RSA 458-C:5, I. The court is vested with the ultimate responsibility for determining and safeguarding the child's best interests, and its duty is to enter such support orders as it believes to be in the child's best interests. Laura, 161 N.H. at 337.

To deviate from the child support guidelines, the trial court is required to issue written findings articulating why a special circumstance justifies an adjustment in order to avoid an unjust or inappropriate result. Id. at 336; see RSA 458-C:4, II. Merely identifying a special circumstance is insufficient; the court must explain why it is consequently appropriate and just to decrease the child support payment below the guideline amount, which is presumptively the amount needed to provide for the child. In the Matter of Forcier & Mueller, 152 N.H. 463, 465 (2005). Without such findings showing why a departure from the guidelines is necessary to avoid an unjust or inappropriate result, see RSA 458-C:4, II, a deviation from the guidelines constitutes error. Forcier, 152 N.H. at 466.

In this case, the trial court justified its 100 percent deviation from guideline support on two circumstances: (1) the father had "43% of the overall parenting time each week"; and (2) the mother's domestic partner directly paid

the mortgage, the escrow, and the fuel oil bills for her house, which the trial court calculated conferred a net benefit to her of $2,275 per month.

However, the trial court did not explain why a 100 percent deviation from the guideline support was necessary to avoid an unjust or inappropriate result. See id. at 465; RSA 458-C:4, II. It merely concluded that "under a totality of the circumstances . . . a deviation in support is equitable." See In the Matter of Gordon & Gordon, 147 N.H. 693, 699-700 (2002) (holding that identifying special conditions, without further findings, does not satisfy the requirement for specific finding on record that application of guidelines would be unjust or inappropriate).

RSA 458-C:5, I(h)(1) provides that "[e]qual or approximately equal parenting residential responsibilities in and of itself shall not eliminate the need for child support and shall not by itself constitute ground for an adjustment." The trial court found that the father's "substantial" parenting time impacted his "household living expenses including utilities, food expenses, and similar regular and necessary living expenses." However, it did not distinguish this case from all other cases in which the parents have approximately equal parenting time, cf. RSA 458-C:5, I(h)(2)(A), (B), or explain why a 100 percent deviation from guideline support was necessary to avoid an unjust or inappropriate result, see RSA 458-C:4, II.

The trial court found that adding the mother's domestic partner's voluntary direct payments of her mortgage and fuel bills to her income would be inappropriate, but did consider them to be a special circumstance under RSA 458-C:5, I. See In the Matter of Carr & Edmunds, 156 N.H. 498, 505 (2007) (stating that gifts and in-kind benefits do not constitute income for child support, but trial court may consider their impact upon parties' financial condition as special circumstance). However, the trial court did not make findings explaining why these voluntary contributions necessitated a 100 percent deviation from the guidelines to avoid an unjust or inappropriate result. See RSA 458-C:4, II. As the mother argues, even if the trial court had added the domestic partner's contributions to her income, it would not have resulted in an order for zero support from the father pursuant to the guidelines.

Nor did the trial court explain why it went from a 25 percent downward deviation in the father's support obligation in 2014 to a 100 percent deviation. At the 2014 hearing, the trial court stated that the parties' relative incomes and parenting time did not "mean[ ] no support by any means," but did warrant "modifying [guideline support] somewhat." The trial court explained why the 25 percent deviation was necessary to avoid an unjust or inappropriate result by finding that the father's substantial parenting time occurred at times when "costs might be incurred, rather than the time [the child] is in school." The record before us does not contain any new evidence that accounts for the change to zero support. See RSA 458-C:5, I(d), (h)(2).

The father argues that his payment of $46 per month for the child's health insurance premium was adequate support, but the trial court did not rely upon this. See RSA 458-C:2, V (Supp. 2016) (establishing minimum support order as "$50 per month, unless the court determines that a lesser amount is appropriate under the particular circumstances of the case"); RSA 458-C:3, V (Supp. 2016) (establishing "presumptive amount of a reasonable medical support obligation shall be 4 percent of the individual parent's gross income, unless the court establishes and orders a different amount based on a written finding or a specific finding . . . that the presumptive amount would be unjust or inappropriate").

Furthermore, as part of the zero support order, the trial court ordered the mother to reimburse the father for all support he had paid since his motion to modify, but did not address that it had previously ordered her to pay all the child's extracurricular expenses. In its July 31, 2014 order, although the trial court found that the father paid "some" child-related expenses "over the past couple of years," it found that this was the father's "choice" and that "he wasn't required to do so." The trial court gave "no weight to these expenses in determining modification of child support." Instead, it stated that "the extracurricular activities, sports fees, etc." had been and continued to be the mother's responsibility because she was receiving child support.

The father argues that "[a]ny additional expenses paid by [the mother] were in the ordinary course." However, that is inconsistent with the trial court's 2014 order. The father argues that the mother received compensation from the child's tort settlement. However, the mother disputes this, and the trial court made no such finding. The father argues that the mother "cites no law or precedent . . . as to why this court should consider . . . on appeal" the child's expenses that the mother paid. However, the statutory scheme allows the trial court to fashion a just modification and repayment order, as necessary, in cases in which the application of the guidelines to payments between the date of filing and the court's final order would be "unjust or inappropriate." Hampers, 166 N.H. at 444-45; see RSA 458-C:4, II.

RSA 458-C:7, III directs the trial court to order reimbursement of support overpayments "absent a showing of undue hardship." We note that the mother was in bankruptcy and that the trial court found that neither party had a high income. To the extent that the father argues that the mother knew "[t]hat there was a likelihood that any overpaid support would require reimbursement," this does not address whether reimbursement of all child support after June 2012 was just or created an undue hardship. It is not clear how it was just to require the mother to reimburse the father for all child support after requiring her to pay all the child's extracurricular expenses because she was receiving support. See Hampers, 166 N.H. at 444-45.

We conclude that the trial court's decision that the father had no child support obligation after June 2012 was an unsustainable exercise of discretion.

See Doherty, 168 N.H. at 696. Accordingly, we vacate the trial court's order regarding the father's child support obligation, including the mother's obligation to reimburse him for any overpayment, and remand for the trial court to recalculate the father's child support obligation. Upon remand, the trial court may take such additional evidence as it deems necessary.

In light of this conclusion, we need not address the mother's other arguments.

Vacated and remanded.

HICKS, BASSETT, and HANTZ MARCONI, JJ., concurred.

Eileen Fox,
Clerk