

STATE OF NEW HAMPSHIRE

SUPREME COURT

2017 TERM

CASE NO 2017-0238

In the Matter of Steven Hoyt

and Lesley Hoyt

RULE 7 DISCRETIONARY APPEAL

3RD CIRCUIT – FAMILY DIVISION – CONWAY

Docket No. 630-2009-DM-00143

(Judge John T. Pendleton)

BRIEF OF APPELLANT

STEVEN M HOYT

This case has been accepted on the briefs and without oral argument

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N.H. Statutes

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Except as otherwise provided in RSA 458:19, I and VII, the court, upon proper application and notice to the adverse party, may revise and modify any order made by it, may make such new orders as may be necessary, and may award costs as justice may require.

N.H. RSA 458:19, I. 4, 7, 12, 15, 17

I. Upon motion of either party for alimony payments, the court shall make orders for the payment of alimony to the party in need of alimony, either temporary or permanent, for a definite or indefinite period of time, if the motion for alimony payments is made within 5 years of the decree of nullity or divorce and the court finds that:

(a) The party in need lacks sufficient income, property, or both, including property apportioned in

accordance with RSA 458:16-a, to provide for such parties reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage;

N.H. RSA 458:19, I. (c).....14

The party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs or is allocated parental rights and responsibilities under RSA 461-A for a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home.

N.H. RSA 458:19-VII..... 12, 13

VII. In cases where the court issues an order for permanent alimony for a definite period of time, such order may be renewed, upon petition of either party, provided that such petition is made within 5 years of the termination date of the permanent alimony order. Nothing in this paragraph shall be construed to change or alter in any way the terms of the original alimony order.

N.H. RSA 458-C:5 I.

- (a) Ongoing extraordinary medical, dental or educational expenses, including expenses related to the special needs of a child, incurred on behalf of the involved children..... 17
- (b) Significantly high or low income of the obligee or obligor..... 17, 18
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N.H. RSA 458-C:5 II.20

II. The party relying on the provisions of this section shall demonstrate special circumstances by a preponderance of the evidence.

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IV. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, at which time the child support obligation, including all educational support obligations, terminates without further legal action. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21.

N.H. REV. STAT. ANN 461-A:14, V (2016).....16, 19

V. No child support order shall require a parent to contribute to an adult child's college expenses or other educational expenses beyond the completion of high school, except as provided in RSA 461-A:21.

QUESTIONS PRESENTED

1. The Trial Court was made aware of the 10/1/2014 original alimony order for Temporary Support; was presented with the statute, and Supreme Court precedent rulings regarding length of alimony orders.

Did the Trial Court err when it heard arguments regarding alimony? The Appellant, Steven Hoyt questions the January 25, 2017 Trial Court's ability to rule on alimony in the case, as Mrs. Hoyt's Motion for alimony fell outside the 5 year limit set by the statute. This ruling also conflicts with prior orders of both the Conway Family Court and the NH Supreme Court. (Appellant's Addendum [hereinafter ADD] at 37; RSA 458:19; [3/13/17 Order ¶ 2])

2. If it were determined that the trial court had the authority to hear arguments For or Against alimony. The Trial Court was presented with supporting arguments for how the original alimony order was for 'Temporary' support. The Trial Court was presented with precedent evidence for how the prior Trial Court had ruling in similar cases. The Trial Court was further provided with evidence of how the NH Supreme Court ruled on the term Temporary Alimony and Permanent Alimony.

The question becomes; did the Trial Court abuse it's discretion by changing the Original Family Courts intent with respect to the type of alimony ordered, and did the Trial Court abuse it's authority by changing the type of alimony originally ordered? ([3/13/17 Order ¶ 3-5])

3. Mr. Hoyt further questions the Honorable Judge Pendleton's order for alimony in that the new alimony order was decided upon conditions for which alimony may not be applied: The

Petitioner in motions for reconsideration; raised the question that the court may not order support for other than the parties needs. In this case Judge Pendleton ordered the alimony to assist with the adult childrens needs. (ADD at 87-92)

Did the Trial Court err when awarding a new alimony order for reasons not allowed by the statute?

4. Mr. Hoyt brings forth that the *Regan v Regan* decision reflected only on the uninsured health care costs associated with Child Support. Judge Pendleton's decision interprets the *Regan v Regan* decision to overturn the Higher court's multiple decisions that Extra-curricular activities are considered part of Child Support. ([3/13/17 Order ¶ 2 & 3]; ADD at 93-94)

Did the Trial Court err in it's interpretation of the *Regan v Regan*, 48 A3.d 920 (NH 2012) decision?

5. Mr. Hoyt questions the Honorable Judge Pendletons order for upward child support deviation; in that the Judge's reasoning goes against the NH Supreme Court's prior ruling. ([3/13/17 Order ¶ 6 & 7]; ADD at 95))

Did the Trial Court err in its order for child support above guideline?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

Mr. Hoyt is currently fifty (50) years old and is employed by Purity Spring Resort as the Lodging Manger. Mrs Hoyt is currently forty-nine (49) years old; has her own hairdressing business; British Hairways, and is also employed as a server at the Red Fox Pub.

The parties have three children;

Ashley Hoyt age 22 [DOB – 12/12/1995]

Ian Hoyt age 19 [DOB – 02/09/1998]

Chloe Hoyt age 16 [DOB – 08/01/2001]

Both parties share custody of the minor child Chloe. Chloe resides full time with Mrs. Hoyt.

Mr. Hoyt is presently paying Child Support in the amount of \$1,053.00 per month.

Mr. Hoyt is presently paying Alimony in the amount of \$200.00 per month plus arrears of \$20.00 per month until the total arrears of \$400.00 is met.

Mr. and Mrs. Hoyt filed jointly for chapter 7 Bankruptcy on July 2nd, 2009

[Case No. 08-13269-MD]

While the parties planned to keep the children in their home. It was later foreclosed upon during the parties divorce proceedings.

Mr. and Mrs. Hoyt separated in July of 2009 and their divorce became final August 5, 2010; The honorable Judge Pamela Albee presiding. (ADD at 1)

On 7/15/2013 - Mrs. Hoyt filed for a change in support; requesting Alimony.

On 10/1/2014 - The honorable Judge Albee granted Mrs. Hoyt an order for Temporary Alimony of \$150.00/month for a period not to exceed 18 months. (ADD at 6)

Mrs. Hoyt further motioned reconsideration; requesting an increase in the amount of alimony, and a longer term for the alimony.

The honorable Judge Albee in her 3/9/2015 Order of Clarification; did grant 15 months Retroactive Alimony to Mrs. Hoyt; however the court determined that the alimony amount and duration would not change from the originally ordered 18 months from 10/1/2014; as Mrs. Hoyt needed temporary rehabilitative support. The Judge was specific in writing her clarification that the court's 10/1/2014 decision was well thought out, and that an alimony award of a greater amount or longer term was not warranted. (ADD at 16)

From 10/10/2014 to March 2016 Mr Hoyt made timely monthly payments of the alimony ordered. Upon the additional alimony order provided Mrs. Hoyt in the March 2015 Clarification Order; Mr Hoyt had to borrow to comply with the retroactive payments of alimony ordered by the court.

On 3/22/2016 Mr. and Mrs Hoyt filed an agreement to end Alimony, and the motion was approved by Judge Pendleton 3/25/2016. (ADD at 18-22)

On 3/31/2016 - the 18 month duration of Judge Albee's October 1, 2014 Order for Temporary Alimony ended. (ADD at 6-7, and ADD at 16-17)

On 2/9/2016 the parties son Ian Hoyt turned 18. He then graduated High School June 18, 2016.

On 5/12/2016 Mr. Hoyt filed a petition for change in Child Support. (ADD at 24-31)

On 7/6/2016 Mrs. Hoyt filed her "*motion to reinstate alimony at a higher amount.*" (ADD at 32)

On 7/15/2016 Mr. Hoyt filed an objection; as Mrs. Hoyt's Motion was filed after the end of the Temporary Alimony term, and was filed past the five year limit set by the statute. (ADD at 33-36, RSA 458:19-I.)

On 7/21/2016 the Court "*granted in part*" – Mrs. Hoyt's motion; the Trial Court decided to hear both parties arguments at the Structuring Conference before making a determination on whether to allow the hearing on alimony. (ADD at 37)

A Structuring Conference was held on 8/4/2016. The Honorable Judge Pendleton explained to

both parties that the Structuring conference was not the place to hear arguments. The Honorable Judge explained to Mrs. Hoyt that Mr. Hoyt was due a reduction in child support; Mrs. Hoyt acknowledged that Mr. Hoyt was due the reduction as the reason she had not contested the child support motion, and for that reason had now requested alimony to resume. The Court also explained to Mrs. Hoyt that it would not be likely for her to get a ruling for Alimony due to the requirements to justify the need.

[Record Citation: *8/4/2016 Scheduling Conference Dictation: Page 8:lines 20-23*] Mr. Hoyt objected to hearing arguments for alimony due to the statute and past orders. The Court recalled that the prior orders were for temporary alimony as a result of a medical issue. [Record Citation: *8/4/2016 Scheduling Conference Dictation: Page 8:lines 20-23*] The Court also explained to Mr. Hoyt following his objection, that the court had discretion to allow listening to arguments for reinstating alimony; taking the decision under advisement.

The Court advised both parties to provide their Proposed Orders and Motions at least 14 days prior to the final hearing. Judge Pendleton was clear that he did not want either party to be surprised or unprepared. Judge Pendleton was clear that he too wanted time to review the parties arguments before the hearing.

On 9/20/2016 The parties attended the court ordered mediation; with no resolution.

12/27/2016 Mrs. Hoyt filed a one paragraph page explaining her need for increased Child Support and Alimony due to her adult children living with her and extracurricular activities for the child remaining under support. Mrs. Hoyt did not file an supporting arguments for why she should be given allowed new alimony; nor case law or statutory reasons for her requested increase to child support. (ADD at 81)

12/27/2016 Mr. Hoyt filed an extensive motion detailing the statutes, Supreme Court precedents and supporting case law; for why both an increase in child support was not warranted, nor

should alimony be allowed. (ADD at 38-80)

A Final Hearing was scheduled with Judge Greenalch for 1/6/2017 however the Judge presiding had to recuse him-self due to his prior professional interactions with the Hoyt's. The Final Hearing was re-scheduled with Judge Pendleton for 1/25/2017. The parties were ordered to update their Financial Affidavits.

On 1/6/2017 Mrs. Hoyt filed and *Affidavit of No Change* with respect to her Financial status.

The Hoyt parties returned to a Final Hearing with the Judge Pendleton on 1/25/2017. Mrs. Hoyt was allowed to make her case before the Honorable Judge Pendleton. She pleaded poor, and needed the increase Child Support and Alimony to be able to support her three children living with her. [Two of those children; are grown adults over the age of 18.] Mrs. Hoyt presented a letter not previously given to Mr Hoyt stating that the parties oldest daughter had a new medical condition that restricted her from school. Mrs. Hoyt further stated she needed assistance paying college tuition for the parties son Ian.

Mr. Hoyt was then allowed to state his case. [Record Citation: 1/25/2017 Final Hearing Dictation: Page 12:lines 6 thru Page15: line 24]

The Trial Courts 3/13/2017 Decision on the 1/25/2017 Final Hearing both granted Mrs. Hoyt an increase to child support, and an explanation for how the Trial Court can change an order of 'temporary' alimony into 'permanent' alimony; thus allowing this court to issue a new alimony order in support of Mrs. Hoyt. [3/13/17 Order]

On 3/23/2017 Mr. Hoyt filed a Motion to Reconsider detailing further facts and arguments; including case law presenting the courts errors on the alimony and increased child support orders. (ADD at 87-96)

Mr. Hoyt's motion was denied by the Trial Court. [4/5/17 Order]

SUMMARY OF THE ARGUMENT

The Trial Court erred when it allowed arguments on the alimony to proceed past the structuring conference. The Statute is clear that the motion must be filed prior to the end of the alimony term, and within 5 years of the divorce decree. The 10/1/2014 Order for alimony was clear in that the alimony was to be “Temporary”. Judge Albee was specific by using the word “Temporary” in ordering the type of alimony, then directing the duration and amount of that Temporary Alimony. Mr. Hoyt provided evidence prior to the scheduling conference, in motions for the Final Hearing, during the hearing, and in motions for reconsideration that the Original Order was for Temporary Alimony. Mrs Hoyt's motion was outside the 5 year time limit set by the statute. During the Scheduling Conference Judge Pendleton stated that the prior order was for Temporary alimony; in his explanation to Mrs. Hoyt that it would be unlikely she would be granted further alimony.

Even if the Trial Court had the authority to hear the arguments for or against the hearing of the Alimony argument; The Judge abused his discretion when he converted the Temporary Alimony order into an order for Permanent Alimony. Judge Pendleton disregarded the intent and forethought that Judge Albee placed in her decision. In her 3/9/2015 Clarification on Pending Motions; Judge Albee restated that the order was temporary with well thought out reasoning. For Judge Pendleton to attempt to reinterpret what the meaning of temporary or permanent alimony is clearly an effort to find some way for him to now order a new or extended order of alimony. Mr. Hoyt provided not only the prior Orders and argument showing what the original intent was; but also provided similar decision's by Judge Albee [Dickinson v Dickinson, CFD: Docket# 630-2006-DM-0013]; showing that when an Obligee making the same request as Mrs Hoyt had; Judge Albee referred back to her original order stating the temporary order had expired, and the obligee's motion was past the five year term.

The Trial Court further erred in considering alimony for reasons not allowed by the statute. While the court may have wanted to assist Mrs. Hoyt. Alimony is not for the support of adult children; nor is Alimony for the support of the child under a support order. Alimony is to assist with the obligees personal financial needs; if the obligee is unable to support herself. Mrs. Hoyt was able to support herself; Mr. Hoyt provided evidence to the effect that Mrs. Hoyt had shown increase to her personal income in excess of the support she had been receiving. The Trial Court's summary decision detailed that it had based the decision on Mrs. Hoyt's desire to support her adult children.

In its March 17, 2017 Order on Reconsideration, the Court explained that extra-curricular activities were not considered part of child support. The Court's interpretation of the *Regan v Regan*, 48 A3.d 920 (NH 2012) decision overturned the *In re Coderre*, decision of which Mr. Hoyt had placed his understanding of the support law and precedent rulings. The Trial Court has over-reached in its interpretation of the *Regan v Regan* case. The decision was specific in overturning the *in re Coderre* decision only in that the medical expenses can no longer be considered part of Child support due to the change in the statute.

ARGUMENT

ALIMONY

The alimony decision below should be reversed because the Trial Court had no authority to order additional alimony.

The Family Division Justices have broad discretion in awarding alimony, however their discretion is limited by the requirement that they exercise their discretion in a legally sufficient manner. The Statute [RSA 458:19-I] clearly limits changes for temporary alimony may be awarded if the motion for alimony is within five years following the divorce decree.

Mr. Hoyt made the Trial Court aware of this limit in his 7/15/2016 Objection to Mrs. Hoyts Motion for Alimony by referring to *In the Matter of Kenick and Bailey*, 156 NH 356(2007) in that The court quoted from N.H.S. JOUR. 1275 (2001) '*Currently there is no limitation on when a spouse could come back to court for alimony. When a couple divorces, the process takes into consideration all of the possessions and assets of the couple and awards them accordingly. After the divorce there must be some time when people are ready to move on with their lives and say the marriage is over.*' The court decided that the 5-year limit remedied a perceived defect in the law that allowed divorced parties to seek alimony indefinitely.” The Trial Court was further reminded that *in Lyon v Lyon*, 95 A.3d 630 (2014) the Court clarified RSA:458:14 in that “*It does not authorize a trial court to make new alimony order or renew an expired alimony order when the petition for such order is filed outside of the five year limitations period in RSA 458:19, I and VII.*” The Trial Court overstepped it's authority to hear arguments for alimony in this case. The prior orders were clearly for temporary alimony. The Motion requesting additional alimony was filed outside of the statutory [RSA 458:19-I] time frame, and no arguments were made to justify the original alimony order was unjust or unfair. The 3/13/2017 Final Order for alimony should be vacated on these grounds.

If the Trial Court did have the authority to hear arguments for or against alimony. The Trial Court overstepped its authority by changing the type of alimony from Temporary to Permanent. In the Scheduling Conference the Trial Court admitted to Mrs. Hoyt that the prior alimony orders were for Temporary Alimony. [Record Citation: 8/4/2016 Scheduling Conference Dictation: Page 8:lines 20-23] The October 1, 2014 alimony order was clearly Temporary Alimony; to assist Mrs. Hoyt for a temporary period.(ADD at 6) The 1/25/2017 Trial Court in an effort to assist Mrs. Hoyt, overstep its authority; by changing the order to permanent status thus allowing the Trial Court to view Mrs. Hoyt's motion with in 5 years of the end of the alimony term [RSA 458:19-VII].

It was the Honorable Judge Albee's intent for temporary duration when she used the word 'Temporary' as it pertained to 'Alimony' in her orders. (ADD – 6) Therefore the alimony order would not fall under [RSA 458:19 section VII] of “Permanent Alimony for a definite period of time.” Rather Judge Albee's intent was that it would follow the guidelines under the statute for which the alimony was of temporary nature and therefore a motion for modification or renewal is subject to the 5 year limit from date of decree. The law is clear that the purpose of alimony is to rehabilitative. See *Calderwood v Calderwood*, 114 N.H. 651, 653, 327 A.2d 704, 706 (1974). The Honorable Judge Albee certified this rehabilitative intent in her 3/9/2015 Orders on Pending Motions (ADD – 16). Mr. Hoyt had further provided the Trial Court with evidence of a similar ruling by the Honorable Judge Albee. See *Dickinson v Dickinson*, Docket#630-2006-DM-0013 (ADD – 105) Where Judge Albee had recognized that Mrs. Dickinson had a temporary need for alimony however here the order had expired and she was outside the 5 year limit set by the statute.

Further the NH Supreme Court presented an interpretation between temporary and permanent alimony in both *Fowler v Fowler*, 145 N.H. 516 (2000) and in *Nassar v Nassar* 943 A.2d 740(2008). The Court noted: “*It has long been recognized that the primary "purpose of alimony is rehabilitative."*

The Supreme Court *in Nassar* supported the husbands appeal by disagreeing with the trial courts order of permanent alimony order on the grounds that and award of alimony for life was not rehabilitative. It finds other cases where non-rehabilitative support is justified, however in this case the wife was able to support her self as she was in good health.

The Supreme Court has provided in *Nassar v Nassar 943 A.2d 740(2008)* an interpretation that Temporary Alimony is rehabilitative where as Permanent alimony is awarded because the receiving party does not have the ability for self support. The Trial Court was presented with evidence as to Mrs. Hoyt's ability to support herself. [RSA 458:19 I.(c)] The remaining child under support does not require Mrs. Hoyt to remain home. Mrs. Hoyt has returned to the work force and grown her personal business revenues. (ADD – 71-72) Her personal income outside of support has improved over the years since the order. While Mrs. Hoyt may desire additional support; the original award was for temporary support, and had expired. (ADD - 6) The Trail Court exceeded it's authority when attempting a reinterpretation of Judge Albee's temporary alimony order.

Further the Trial Court modified the original award without proof of a substantial change in circumstances. *In Laflamme v Laflamme*, 144 N.H. 524, 527 (1999), the supreme court held that a trial court cannot modify and award unless the petitioner shows “That as substantial change in circumstances has arisen since the initial award, making the current support amount either improper or unfair.”

In Mrs. Hoyt's motion and in her arguments in hearing; she did not provide argument or proof that the original order was unfair or improper. The 3/19/2015 ruling of the Trial Court had already provided explanation to Mrs. Hoyt that the original temporary alimony order was well thought-out and provided for rehabilitative assistance for Mrs. Hoyt. (ADD - 16)

Mrs. Hoyt had improved her financial situation during the time of the alimony by growing her

personal business, and increasing her earnings over the past two years. This was shown to the Trial Court by Mr. Hoyt's Findings of Fact presenting Mrs. Hoyt's Interrogatory responses and Rule 1.25 documentation. (ADD – 39-53) There was clearly no substantial change presented by Mrs. Hoyt that allowed the Trial Court to modify or make a new alimony order.

In addition the Trial Court's consideration for new alimony appears to be based on other than Mrs. Hoyt's personal need for support.

3/13/17 Final Order page 5: The Trial Court noted that:

“The court does consider in this grant the extraordinary situation in which Mrs. Hoyt now finds herself, having to care for 3 children, 2 of which are emancipated but in college, and one of which now has been forced to withdraw from college as a result of unique and debilitating medical issues. The Court basis its decision to award a minor amount of alimony on these factors and determination that justice so requires given the status of the parties, but for a limited time.”

Mr. Hoyt recognizes that their daughter, Ashley, has a medical challenge. He is proud that she received her Associates Degree from Oxford College at Emory University. Mr. Hoyt recognizes that Chloe participates in activities that might incur some expense. However, the Alimony statute [RSA 458:19-I (a)] allows for support to “*provide for such parties reasonable needs.*” That 'party' being solely Mrs. Hoyt herself. The alimony statute is not intended to include support for emancipated adult children, support for an adult child's college expense, or for the extra-curricular expenses of a child currently under a child support order.

In the Scheduling Conference (8/4/2016) Mrs. Hoyt presented her need for Alimony as a result of her assisting the Adult children with their personal expenses. Therefore Mr. Hoyt in 2nd interrogatories asked for Ashley Hoyt's and Ian Hoyt's employment status and income for the prior and

current year. Mrs. Hoyt declined to provide any such information in the 2nd interrogatories, or following multiple further requests by Mr. Hoyt; Mrs. Hoyt responded in the 2nd Interrogatories:

“I object based on relevancy. Ashley and Ian are adults. Alimony is based on my ability to pay my expenses. Upward deviation in child support is based on Chloe's Expenses.”

The Court had directed both parties to submit advance pleadings and arguments prior to the final hearing; in order for both parties to prepare for the hearing. [Record Citation: 8/4/2016 Scheduling Conference Dictation: Page 9:lines 15-25] Mrs. Hoyt did not provide any advanced filings, pleadings, or arguments as this court had directed other than a proposed order of one paragraph stating “she could not make ends meet.” (ADD – 81) Therefore Mr. Hoyt did not feel the need to enter in the 2nd interrogatory evidence because Mrs. Hoyt had conceded that the adult children would not be part of her motion. The Statute RSA 461-A:14, IV and V does not provide for alimony support to cover emancipated adult children's expenses even if Mrs. Hoyt chooses to take on those debts. They are not the debts of Mr. Hoyt and shall not be considered in alimony.

The Trial Court erred when it considered the Adult children's expenses as reasoning for the alimony award as those expenses are outside of the statute. Even if the court felt that Ashley's medical issues; created a status of an “adult child with disabilities;” Ashley is 21 years old. Ashley's support order had expired and due to her present age is outside of the age limit in RSA 461-A:14 IV with respects to parties having a child with disabilities.

The Trial Court clearly wanted to assist Mrs. Hoyt. For the foregoing reasons the Trial Court abused it's discretion when making a new order for alimony. The Alimony orders should be vacated.

CHILD SUPPORT

The Trial Court clearly intended to reference the statute RSA 458-C:5 I. (i), (j), (a) and (b) as RSA 458:19 refers to Alimony and not Child Support. In addition RSA 458:19 does not have a sub section (i) or (j). The Petitioner understood the Trial Court's mistake when filing his motion for reconsideration, and addressed the correct Statute.

The Petitioner respectfully requests the court review, and reconsider the following points of fact and law that the Trial Court has overlooked or misapprehended regarding pleadings and filings with regards to the child support order under RSA 458-C:5. The Trial Court in it's Order for an upward deviation in Child Support wrote [3/13/17 Order ¶ 7]

“The Court finds Mrs. Hoyt has presented a reasonable argument for a minor upward adjustment specifically but not limited to, under the grounds of RSA 458:19 (i), (j), (a) and (b). The Court, in reaching it's conclusion actually considers the testimony and financial affidavit of Mrs. Hoyt to the extent that she cannot pay any rent because of the extraordinary costs relating to Chloe's after school activities, and the continued costs she incurs carrying for recently graduated Ian who attends college and lives with Mrs. Hoyt when not in college.”

With Respect to the Trial Court; Mrs. Hoyt made no such arguments regarding RSA 458:19 or any of the subheadings of the statute. The Trial Court made the arguments for those points in it's summary order on Mrs. Hoyt's behalf. Mr. Hoyt in his motion for Reconsideration presented the failings of those arguments. (ADD – 93-96) Further, it is the responsibility of the Party (Mrs. Hoyt) to make the argument not the presiding Judge.

With respect to the Trial Courts finding for RSA 458-C:5 I. (a)

Chloe for whom the support is ordered, has no extraordinary medical, dental or educational

expenses. The extra costs Mrs. Hoyt has claimed are for extracurricular activities and are contained in the guideline child support amount.

The Trial Court had noted that the increase was to assist with Chloe's extra-curricular activities. Mr. Hoyt had cited *In re Coderre*, 807 A.2d 1245, 148 N.H. 401 (N.H. 2002) as the reason the court should not consider the extra-curricular activities as reason to increase child support. The Trial Court in its summary order (Order ¶ 2) stated that *In re Coderre* was overturned in part on other grounds in *Regan v. Regan*, 48 A.3d 920 (N.H. 2012).

The Trial Court has overlooked that the *Regan v Regan* case was specific to overturning *In re Coderre* only with respect to child support as it related to uninsured medical expenses due to changes of the statute. *In Regan v Regan*:

“Thus, the statutes we interpreted in In the Matter of Coderre & Coderre have changed.

As a result, we must review the new treatment of uninsured medical expenses in the child support guidelines and RSA 461-A:14, IX.”

The *Regan v Regan* overturn only affected the uninsured medical expenses and did not overturn the decisions previously made with respect to extracurricular activities being part of guideline child support set in place *in Coderre*. The Petitioner requests the court review this consideration by the Trial Court as its interpretation is contrary to the prior Supreme Court rulings; that extra-curricular activities are part of guideline child support and are not subject to special circumstance increase.

With respect to the Trial Courts finding for RSA 458-C:5 I. (b)

The parties differential level of income has remained consistent since the parties divorced in 2010. Providing additional support above guideline would create an unjust burden on Mr. Hoyt while giving Mrs. Hoyt no reason or incentive to improve her financial standing on her own.

The parties while together had exceeded their acceptable level of living to the extent that

together they declared bankruptcy, and shortly following their home was taken in foreclosure. Mrs. Hoyt notes future expenses on her Financial Affidavit which appear to increase her actual monthly expense report. Mr. Hoyt cannot be expected to support Mrs. Hoyt at a level of living that had previously forced him into bankruptcy. Mr. Hoyt must be allowed to support himself, and while his income has increased slightly over the years; Mrs. Hoyt's earnings have increased as her ability to support herself has improved. In addition she is in a long term co-supportive relationship. While the parties 15 year old child Chloe has been choosing to spend all of her parental time at the Respondent's residence. The parties income level difference have not deviated from those at the time of divorce. In addition the Trial court in prior orders (ADD - 7-10) granted Mrs. Hoyt the tax credits for all future years Chloe was eligible; thereby providing for Mrs. Hoyt the added tax benefit under this section.

With respect to the Trial Courts finding for RSA 458-C:5 I. (i)

The Trial Court may not consider the adults children college costs when considering a deviation in child support. **RSA 461-A:14 V** Mrs. Hoyt testified that she is assisting the adult children with their expenses. While the Trial Court took Mrs. Hoyts testimony as fact; [Record Citation: 1/25/2017 *Final Hearing Dictation: Page 7:lines 17 thru Page 8: Lines 12*] Mrs. Hoyt presented false testimony. Mrs. Hoyt had not provided to the Trial Court or Mr. Hoyt any loan documentation, or proof of payments as required by rule 1.25; and those requested through interrogatories. Nor did Mrs. Hoyt state loan amounts or expense amounts on her December 14, 2016 Financial Affidavit; or the updated affidavit required by the court for the final hearing.

Further RSA 458-C:5 I. section (i) applies only to previously agreed to payments for post secondary education; other wise under **RSA 468:A-14 V**. The Trial Court made Mrs. Hoyt aware of this fact in the Hearing.]Record Citation: 1/25/2017 *Final Hearing Dictation: Page 7:lines 24 thru Page 8: line 5.*]

RSA 458-C:5 I. (i) can not be considered when making an upward deviation in this case as there is no voluntary agreement in place for post secondary support.

With respect to the Trial Courts finding for RSA 458-C:5 I. (j)

Mr. Hoyt asked the Trial Court to note that Mrs. Hoyt had not claimed the need to pay rent. Mrs. Hoyt had made no testimony to an obligation to pay rent, nor had she inferred that she is in arrears for not paying rent. In her sworn affidavits and interrogatory responses, she has no rent obligation. (ADD-78) This was verified in her sworn affidavit from her Live-in/Significant Other's letter of agreement. (ADD - 74-75)

The Trail Court did note Mr. Hoyt's findings of fact; in that Mrs. Hoyt had made some errors on her Financial Affidavit, including not submitting her January pay stubs. Mrs. Hoyt did not further present to the Trial Court an updated Financial Affidavit since the December 14th, 2016 filing. She provided no modification before the January 25th Hearing as the Court noted she provided an '*Affidavit of No Change.*' (ADD - 117) Mrs. Hoyt's claim that the burden of having the adult children home from college is not represented in her financial filings. Ian and Ashley were home during the period of 'no-change' and Mrs. Hoyt had no increase in expense and no decrease in her income, nor a decrease in her ability to work.

The statute RSA 458-C:5 II. requires the party relying on the provisions of section C:5 to demonstrate by a preponderance of evidence. Mrs. Hoyt did not provide any evidence. It appears the Trail Court made it's determination on it's own; that this section applied with no proof other than Mrs. Hoyt's in court verbal testimony. If the Trial Court found other "Special Circumstances" it did not make clear what those circumstances were in it's summary decision. Mrs. Hoyt did not apply for these special circumstances; she provided no preponderance of evidence justifying the increase to support; and yet the Trial Court found and created the argument for her.

CONCLUSION

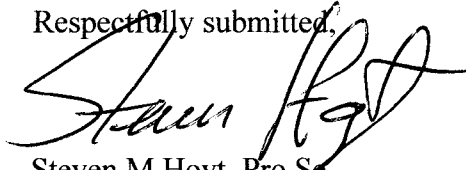
For the foregoing reasons, the Appellant respectfully requests that the 3/13/2017 order for alimony award be vacated. The appellant request the court order Mrs. Hoyt to re-pay Mr. Hoyt all alimony support paid since the 3/13/2017 decision.

The Appellant accepts the current amount of child support as ordered by the 3/13/2017 Court order. For the forgoing reasons, the Appellant requests the Trial Court's reasoning for the upward deviation be stricken as the Trial Court's misunderstanding of the statute and prior rulings created an err in what child support may be applied to.

CERTIFICATION OF WRITTEN DECISIONS

I hereby certify that the Decisions being Appealed are written and are appended to this brief.

Respectfully submitted,



Date: November 1, 2017

Steven M Hoyt, Pro Se
1251 Eaton Road,
Madison, NH 03849

603-367-4000

shoyt@purityspring.com

STATEMENT WITH RESPECT TO ORAL ARGUMENT

This Court's Order dated August 1, 2017 directed that this case was accepted and would be submitted on briefs without oral argument to the full court. Accordingly, the statement with respect to oral arguments is not required in this case.

Date: November 1, 2017



Steven M Hoyt, Pro Se

CERTIFICATION

Pursuant to Supreme Court Rule 16(10), I hereby certify that on this day two copies of this brief have been mailed, postage paid, to Lesley C. Hoyt, Pro Se

Date: November 1, 2017



Steven M Hoyt, Pro Se

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

CARROLL COUNTY

3rd CIRCUIT - FAMILY DIVISION - CONWAY

In the Matter of:
Steven Hoyt, Petitioner, and Lesley Hoyt, Respondent
Case No. 630-2009-DM-00143

FINAL HEARING ORDER OF JANUARY 25, 2017

The Court held a 45-minute Final Hearing in the above matter. The parties appeared *pro se*. Ms. Hoyt is asking for an upward departure on amended child support and/or an extension of temporary alimony. She presented a Uniform Support Order as her proposed order. Mr. Hoyt had submitted detailed proposed order regarding his position that modification of alimony should be denied today. He filed a document titled Findings of Fact and Argument, the content of which are dealt with and considered in issuance of this Order. Mr. Hoyt also submitted a proposed order on child support. The Court notes the file reflects the Final Orders in this case were issued on August 5, 2010, meaning the divorce Judgement date is 30 days thereafter.

Ms. Hoyt argues that alimony and an upward adjustment on child support is appropriate in this case. She argued she needs assistance to support herself and the minor child in part as a result of all of the other expenses she is now incurring. She testified that their 21-year old daughter, Ashley, has moved home because of a serious medical condition. Ashley was recently diagnosed with Hypermobility Joint Syndrome ("HJS") and small Fiber Sensory Neuropathy Syndrome ("FSNS"). Ms. Hoyt submitted an exhibit from Dartmouth-Hitchcock indicating such. HJS causes Ashley's joints to dislocate easily which leads to pain and injury. Additionally, FSNS causes severe pain and stiffness of joints. It is the second time Ashley has been required to withdraw from college for medical reasons. Ms. Hoyt is currently driving the daughter to Dartmouth-Hitchcock regularly for care. She indicated she has driven the daughter to Dartmouth-Hitchcock over 20 times since her last withdrawal from school.

Additionally, they have a son in college who is 19 and the father provides no assistance for the son. The couple also has a child who is a high school sophomore, named Chloe. Chloe has some unusual extracurricular activity expenses this year as a result of being invited as part of her involvement in a school dance group to dance at Disney World. The trip costs \$1,600.00 in costumes and makeup combined, totaling an additional \$3,000.00. Mr. Hoyt has indicated he was disinclined to contribute because he was not included in the determination as to whether this was a necessary fee.

Mr. and Ms. Hoyt both submitted financial information, Ms. Hoyt submitting an affidavit as to no change, referring back to her December 14, 2017 Financial Affidavit. Steven filed his affidavit on January 17, 2017, but only included one pay stub. He claims in his financial affidavit to have \$6333.34 of gross income, but his pay stub indicates his gross earnings to be 2923.07. The paystub indicates he is paid bi-weekly in a handwritten note. If converted to weekly pay and multiplied by 4.33 his pay is approximately as listed on the financial affidavit. The court does note, Rule 1.25-A requires paystubs to be submitted for 4 weeks. Ms. Hoyt submitted no paystubs with her financial affidavit, claiming a combined income on to of child support of \$1420.70. Neither party challenged the material accuracy of the income reported on the financial affidavits during the hearing, though Mr. Hoyt argued Ms. Hoyt is voluntarily under employed. The Court also notes he filed findings of facts or rulings requesting the Court find she did make material misstatements based upon the last 4 week paystubs submitted by Ms. Hoyt with her December Financial Affidavit.

Mr. Hoyt did argue that the Court does not have the ability to modify alimony as a result of New Hampshire RSA 458:19. He argued that the request for modification is not within five years of the Final Decree and/or not within five years of the end of a permanent alimony order for a set amount of time. The Court notes Ms. Hoyt was granted alimony for 18-months post final decree and that her filing is within five years of that request but is not within 5 years of the original date the divorce became final.

As far as child support, Mr. Hoyt also argues that child support is designed generally to incorporate extracurricular activity expenses. The Court recognizes his reference to *In re Coderre*, 807 A.2d 1245, 148 N.H. 401 (N.H. 2002), overturned in part on other grounds in *Regan v. Regan*, 48 A.3d 920 (N.H. 2012).

I. Alimony:

Based on the testimony, and the legal arguments submitted, the Court makes the following Findings of Fact and Rulings of Law, and as part of this, addresses the issues raised in Mr. Hoyt's Request for Findings of Fact and Rulings of Law as submitted prior to the hearing.

As to the request to award new or modified alimony, such determination is governed by NH RSA 458:19.

458:19 Alimony. –

I. Upon motion of either party for alimony payments, the court shall make orders for the payment of alimony to the party in need of alimony, either temporary or permanent, for a definite or indefinite period of time, if the motion for alimony payments is made within 5 years of the decree of nullity or divorce and the court finds that:

(a) The party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; and

(b) The party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and

(c) The party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs or is allocated parental rights and responsibilities under RSA 461-A for a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home.

A Court is thus authorized to issue or extend Alimony within 5 years of the initial final order of divorce, and may also modify or extend if a motion is file within 5 years of the end of a permanent alimony award. *Id.* at V. "*In cases where the court issues an order for permanent alimony for a definite period of time, such order may be renewed, upon the petition of either party, provided that such petition is made within 5 years of the termination date of the permanent alimony order.*"

Mr. Hoyt argues the prior alimony awarded was temporary alimony and not a permanent award for a set period of time. Thus, he argues that the Court lacks authority to modify the prior Order because it was not a permanent Order.

To address Mr. Hoyt's well researched argument, the court first looks to determine whether the 18 months of alimony previous awarded should be defined as temporary or permanent. The Court did make an effort to locate case law or statutory law that might clarify the issue of temporary and permanent alimony for a defined period but could not find any. The Court therefore applies its common sense interpretation to the statute, which in the Court's opinion means temporary alimony means alimony awarded as part of the temporary orders or in other words, prior to a final order being issued. In this case the alimony, while it may have been for a temporary period, was awarded post final decree, under RSA 458:19, V for the defined period of 18 months, meaning it was a permanent award for a set period of time under RSA 458:19 V. The Court in reaching this conclusion expresses it does so because this is the only interpretation that gives meaning to the words temporary and permanent in light of 458:19 V, and its reference to "permanent alimony for a defined period".

When an alimony order has terminated and the issue is whether it should be renewed, either in modified or unmodified form, the burden is upon the party in whose favor the order is to run to establish that justice requires a renewal or extension, and if so, what justice requires as to amount, in the light of all the circumstances then existing. Lyon v. Lyon, 166 N.H. 315, 316, 95 A.3d 630, 631 (2014).

The Respondent's detailed Finding of Fact and Argument document argues that Ms. Hoyt has increased her income and decreased her debts over the past several years. The Court does not find either a material increase in income or decrease in debt. The Respondent argues that he should not be responsible to assist his 21 year old daughter with her unique medical needs, indirectly through ongoing alimony. Petitioner argues that her expenses are legitimate expenses as to both the 21 year old child, the 19 year old who is in college and Chloe, because Chloe has certain unanticipated high extracurricular activity costs.

The Court having reviewed the information presented at the hearing and on financial affidavits submitted in this case determines that the Petitioner does have the ability to pay alimony which the court is considering requiring on a temporary basis. The point being specifically, that Mr. Hoyt's affidavit does not show debts specifically relating to

his prior child support payments, and a history of being able to make those payments in the additional amount of \$1600 per month. Those payments have been reduced because Ian turned 18 and graduated from high school to the current ordered amount of \$1006. The Court also must look in its analysis as to whether Ms. Hoyt has a legitimate need under the alimony provisions of NH statutes. It looks again to NH RSA 458:19 upon which it must decide whether to modify the current status of the Parties to address the request for alimony.

The Court does not consider Ms. Hoyt voluntarily under employed at this time, but it recognizes that Ms. Hoyt, but for the special needs of her children, including Chloe, may have the ability to increase her income in the future. The Court considers the Petitioner's arguments on finances in coming to this conclusion. Ultimately it looks to the current financial affidavits on file with the Court, and the prior history of the Parties as indicated above. The Court does consider in this grant the extraordinary situation in which Ms. Hoyt now finds herself, having to care for 3 children, 2 of which are emancipated but in college, and one of which has now been forced to withdraw from college as a result of unique and debilitating medical issues. The Court basis its decision to award a minor amount of alimony on these factors and a determination that justice so requires given the status of the Parties, but for a limited time.

The Court therefore awards \$200.00 to Respondent but for a limited period of time, that being 12 months, subject to further modification if necessary. No retroactive alimony is awarded at this time, other than to make it retroactive to the date of the hearing on January 25, 2017, thus there is a two month arrearage relating to this amount. The Court encourages Ms. Hoyt to continue to make efforts to maximize her income moving forward, and to develop her business. The Court is concerned with the burdens she is carrying relating to the children but recognizes the concerns of Mr. Hoyt, to the extent he feels he should not be required to assist in the care of his legally emancipated adult children. The Court hopes the medical issues relating to Ashley are resolved in the next 12 months. This is meant as a minimum order to assist Ms. Hoyt in meeting her day to day needs considering the parties prior positions and current legitimate challenges..

II. Child Support

The Court agrees with Mr. Hoyt that the Guidelines child support amount is generally considered to include extracurricular activities. The Court, as it did on the record, also noted that a party is entitled to seek an upward modification of child support as a result of extracurricular activities and/or other circumstances. The Court also notes it takes Ms. Hoyt's argument to be that an upward departure is appropriate as a result of other issues within the family and as directly relate to the remaining minor child.

458-C:4, II indicates as follows: "There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support." The Court looks to the criteria set forth in RSA 458-C:5 to determine if an adjustment is appropriate. The Court may consider among other reasons to depart from the child support guideline figure:

- (a) Ongoing extraordinary medical, dental or education expenses, including expenses related to the special needs of a child, incurred on behalf of the involved children.
- (b) Significantly high or low income of the obligee or obligor, which might be applicable in this case under subparagraph (2) which indicates that in considering an adjustment when one or both parents have low income, the court shall determine how to optimize use of the parents' combined incomes to arrive at the best possible outcome for the child or children, provided that the basic support needs of the child or children are met.
- (c) The economic consequences of the presence of stepparents, step-children or natural or adopted children.
- (d) Reasonable expenses incurred by the obligor parent in exercising parental rights and responsibilities, provided that the reasonable expenses incurred by the obligee parent for the minor children can be met regardless of such adjustment. ...
- (h) Parenting schedule.
 - (1) Equal 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.

(2) In considering requests for adjustments to the application of the child support guidelines based on the parenting schedule, the court may consider the following factors:

(A) Whether, in cases of equal or approximately equal residential responsibility, the parties have agreed to the specific apportionment of variable expenses for the children, including but not limited to education, school supplies, day care, after school, vacation and summer care, extracurricular activities, clothing, health insurance costs and uninsured health costs, and other child-related expenses.

(B) Whether the obligor parent has established that the equal or approximately equal residential responsibility will result in a reduction of any of the fixed costs of child rearing incurred by the obligee parent.

(C) Whether the income of the lower earning parent enables that parent to meet the costs of child rearing in a similar or approximately equal style to that of the other parent.

(i) The economic consequences to either party of providing for the voluntary or court-ordered postsecondary educational expenses of a natural or adopted child.

(j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration.

The Court finds Ms. Hoyt has presented a reasonable argument for a minor upward adjustment specifically but not limited to, under the grounds of RSA 458:19 (i), (j), (a) and (b). The Court, in reaching its conclusion actually considers the testimony and financial affidavit of Ms. Hoyt to the extent that she cannot pay any rent because of the extraordinary costs relating to Chole's after school activities, and the continued costs she incurs carrying for the recently graduated Ian who attends college and lives with Ms. Hoyt when not in college. The Court limits its adjustment to require the splitting of Chole's extracurricular activities, to include dance, the ultimate cost of the dance trip, and sports camps. The Court calculates the child support obligation moving forward on a monthly basis in the attached Uniform Support Order, based upon the attached child support guidelines worksheet, using the submitted financial affidavit numbers on each party's financial affidavit. The court specifically finds that relying on these numbers is appropriate, as opposed to adopting the

Petitioner's income arguments. The Court determines this minor adjustment is necessary to meet the reasonable needs of the minor child. The court also believes that the attached Uniform Support Order optimizes the use of the parents' combined incomes to arrive at the best possible outcome for the child to ensure that the basic support needs of the child is met.

The Court does not apply the modification retroactively to June, but does apply it as of the hearing date of January 25, 2017. That leaves a minor arrearage to be addressed by Petitioner in the amount of \$94.00, as shown on the Uniform Support Order attached.

While the Court does not base this decision specifically on the health issues relating to Ashley or the fact that both Ashley and Ian both live at home when not in college, and Ashley being unable to go to school is living at home full time, the Court does believe such information is relevant under RSA 458-C:5.

III. Conclusion

The Court grants this order after considering all of the evidence before it, and the pleadings of both parties. The Court is disheartened that the parties could not resolve this issue together, with the best interest of the couples' children in mind. The parties will be co-parenting their children whether or not the children are adults for the rest of the parties lives. All of the children in this family clearly need the assistance of both parents given their individual challenges. The Court hopes each parent will try extremely hard to put aside their own feelings regarding the other or financial issues moving forward.

So Ordered,

March 13, 2017
Date



Judge John T. Pendleton

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: 3rd Circuit Court-Family Division-Conway

Case Name: Steven Hoyt and Lesley Hoyt

Case Number: 630-2009-M-143

UNIFORM SUPPORT ORDER

Name, Residence and Mailing Address of Person
Ordered to Pay Support (Obligor)

Name, Residence and Mailing Address of
Person Receiving Support (Obligee)

Beach Road
Madison, NH 03849

Lesley Hoyt
PO Box 1883
438 Kearsarge Rd.
North Conway, NH 03860

D.O.B. 10/12/1967 Telephone _____

D.O.B. 03/28/1968 Telephone _____

E-mail Address _____

E-mail Address _____

Name of Employer: Purity Spring Resort, Inc.

Name of Employer: _____

Address of Employer:

Address of Employer:

1251 Eaton Road
Madison, NH 03849 (603) 367-8896

Child(ren) to whom this order applies:

Full Name	Date of Birth
<u>Ashley Marie Hoyt</u>	<u>12/12/1995</u>
<u>Chloe Abigail Hoyt</u>	<u>08/01/2001</u>

Full Name	Date of Birth
<u>Ian Michael Hoyt</u>	<u>02/09/1998</u>

The following parties appeared: Obligor Obligee Division of Child Support Services
 Other _____

NOTE: SECTIONS PRECEDED BY ARE ONLY PART OF THIS ORDER IF MARKED.

1. This order is entered:

- after hearing
 upon approval of agreement
 upon default

2. This order is a:

- temporary order
 final order

3. This order modifies a final support obligation in accordance with:

- a three-year review (RSA 458-C:7) OR substantial change in circumstances, as follows:

4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS (See Standing Orders 4A-4G):

4.1 CHILD SUPPORT: \$ 1,053.00 per month (week, month, etc.)

4.2 Arrearage of \$ 94.00 as of 03/13/2017,
payable \$ 20.00 per month (week, month, etc.)

Case Name: Steven Hoyt and Lesley Hoyt

Case Number: 630-2009-M-143

UNIFORM SUPPORT ORDER

4.3 Medical arrearage of \$ 0.00 as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.4 SPOUSAL SUPPORT (ALIMONY): \$ 200.00 per month (week, month, etc.)

4.5 Arrearage of \$ 400.00 as of 03/13/2017,
payable \$ 20.00 per month (week, month, etc.)

4.6 Alimony shall terminate 2/15/2018

5. Payments on all ordered amounts shall begin on 3/20/2017. All ordered amounts shall be payable to Obligee Division of Child Support Services Other _____

6. This order complies with the child support guidelines. RSA 458-C.

This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.

The following special circumstances warrant an adjustment from the guidelines (Enter applicable circumstances below. See Standing Order 6):

See narrative order issued on same date.

7. Support ordered is payable by immediate income assignment.

8. The Court finds that there is good cause to suspend the immediate income assignment because:

Obligor and obligee have agreed in writing.

Payments have been timely and it would be in the best interest of the minor child(ren) because:

9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT.** (See Standing Order 9A).

9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.

MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)

10. OBLIGOR'S medical support reasonable cost obligation: \$ 253.00 per month (week, month, etc.)

10A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

11. Private health insurance coverage is not available is available to the OBLIGOR in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 10.

12. Private health insurance coverage available to the OBLIGOR is not accessible to the child(ren).

13. OBLIGEE'S medical support reasonable cost obligation: \$ 56.00 per Month (week, month, etc.)

Case Name: Steven Hoyt and Lesley Hoyt

Case Number: 630-2009-M-143

UNIFORM SUPPORT ORDER

13A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

14. Private health insurance coverage is not available is available to the OBLIGEE in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 13.

15. Private health insurance coverage available to the OBLIGEE is not accessible to the child(ren).

PRIVATE HEALTH INSURANCE COVERAGE (Paragraph 16A and/or 16B must be completed):

16A. Obligor Obligee is ordered to provide private health insurance coverage for the child(ren) effective Maintain current coverage.

16B. Obligor Obligee is/are not ordered to provide private health insurance coverage at this time but is/are ordered to immediately obtain private health insurance coverage when it becomes accessible and available at an amount equal to or less than the ordered medical support reasonable cost obligation.

UNINSURED MEDICAL EXPENSES

17. Uninsured medical expenses shall be paid in the following percentage amounts:

Obligor 50 % Obligee 50 % Other: _____

18. Public assistance (TANF) or medical assistance (Medicaid) is or was provided for the children. Copies of pleadings related to medical coverage and child support were mailed to the Division of Child Support Services, Child Support Legal, 129 Pleasant Street, Concord, NH 03301.

19. Obligor Obligee is adjudicated the father of the minor child(ren) named above. The clerk of the city(ies) of _____ shall enter the name of the father on the birth certificate(s) of the child(ren). The father's date of birth is _____ and his state of birth is _____.

20. The State of _____ has provided public assistance for the benefit of the minor child(ren) between _____ and _____ for _____ weeks. Obligor is indebted for the assistance in the total amount of \$ _____

21. Variation to standing order (specify paragraph #), additional agreement or order of the Court:

See narrative Order issued on same date.

Obligor

Obligee

Staff Attorney
Division of Child Support Services

Obligor's Attorney/Witness

Obligee's Attorney/Witness

Date

Date

Date

Case Name: Steven Hoyt and Lesley Hoyt

Case Number: 630-2009-M-143

UNIFORM SUPPORT ORDER

All paragraphs of this order (except those that have a check box and have not been selected) and all paragraphs of the Standing Order, (except variations in paragraph 21) are part of this order and apply to all parties.

Recommended:

Date

Signature of Marital Master/Hearing Officer

Printed Name of Marital Master/Hearing Officer

So Ordered:

I hereby certify that I have read the recommendation(s) and agree that, to the extent the marital master/judicial referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the marital master/judicial referee/hearing officer.

Date

3/13/17

Signature of Judge

John T. Pendleton

Printed Name of Judge

Judge

**THE STATE OF NEW HAMPSHIRE
UNIFORM SUPPORT ORDER — STANDING ORDER**

NOTICE: This Standing Order (SO) is a part of all Uniform Support Orders (USO) and shall be given full effect as an order of the Court. Variations to paragraphs of the SO in a specific case must be entered in paragraph 21 of the USO and approved by the Court.

(Paragraph numbers in the SO correspond to related paragraph numbers in the USO. Variations entered in paragraph 21 should reference the related paragraph number.)

SUPPORT PAYMENT TERMS

SO-3A. All prior orders not inconsistent with this order remain in full force and effect.

SO-3B. In cases where the order of another jurisdiction is registered for modification, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing jurisdiction. (See RSA 548-B:49,III.)

SO-3C. This order shall be subject to review and Court modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. The effective date of any modification shall be no earlier than the date of notice to the other party. "Notice" means either of the following: 1) service as specified in civil actions or 2) the respondent's acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following the respondent's acceptance. See RSA 458-C:7.

NOTE: The July 1, 2013 change to the child support guidelines does not constitute a substantial change in circumstances. 2012, Chapter 248:5, "Applicability" states as follows (emphasis added):

"RSA 458-C:3, I as amended by this act shall apply to any child support order issued on or after July 1, 2013. RSA 458-C:3, I as amended by this act shall not apply to a valid child support order in effect on the effective date of this act until the next scheduled review hearing under RSA 458-C:7 or as otherwise agreed by the parties. This act shall not constitute a substantial change in circumstances for purposes of RSA 458-C:7."

SO-3D. No modification of a support order shall alter any arrearages due prior to the date of filing the pleading for modification. RSA 461-A:14, VIII.

SO-4A. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, at which time the child support obligation, including all educational support obligations, terminates without further legal action, except where duration of the support obligation has been previously determined by another jurisdiction, or is governed by the law of another jurisdiction, and may not be modified in accordance with statutory language referenced in SO-3B. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21. (See RSA 461-A:14, IV)

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

Court Name: 10th Circuit Family Division Portsmouth

Case Name: Steven Hoyt and Lesley Hoyt

Case Number: _____

**CHILD SUPPORT GUIDELINES WORKSHEET
Effective April 1, 2015**

Child's Name	DOB	Child's Name	DOB
Chloe Hoyt	12/12/2001		
1. Total Number Of Children <input checked="" type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 +			
2. Obligor's Reasonable Medical Support Obligation (4% Monthly Gross Income, rounded to the nearest dollar) \$253.33		3. Obligee's Reasonable Medical Support Obligation (4% Monthly Gross Income, rounded to the nearest dollar) \$56.83	

PAYMENT CALCULATIONS	OBLIGOR (Column 1)	OBLIGEE (Column 2)	Combined (Column 3)
4. Monthly gross income	\$ 6333.34	\$ 1420.70	
5A. Court/Admin. ordered support for other children	\$ _____	\$ _____	
5B. 50% of actual self-employment taxes paid	\$ _____	\$ _____	
5C. Mandatory retirement	\$ _____	\$ _____	
5D. Actual state income taxes paid	\$ _____	\$ _____	
5E. Allowable child care expenses (obligor) (See LINE 5E instructions)	\$ _____		
5F. Medical support for children (obligor)	\$ _____		
5G. Total deductions (Add lines 5A through 5F)	\$0.00	\$0.00	
6. Adjusted monthly gross income (Subtract line 5G from line 4)	\$6,333.34	\$1,420.70	\$7,754.04
7A. Child Support guideline amount (From Guideline Calculation Table)			\$1,246.11
7B. Guideline Percentage (From Guideline Calculation Table)			21.53 %
8A. Allowable child care expenses (obligee) (See LINE 8A instructions)		\$ _____	
8B. Medical support for children (obligee)		\$ 258.49	
8C. Total allowable obligee expenses (Add line 8A and 8B)		\$258.49	
9. Total adjusted monthly gross income	\$6,333.34	\$1,162.21	\$7,495.55
10. Proportional share of income	84.49 %	15.51 %	
11. Parental support obligation (Line 10 times line 7A)	\$1,052.90	\$193.21	
ABILITY TO PAY CALCULATION			
12. Self-support reserve (From Guideline Calculation Table)	\$1,128.00		
13. Income available for support (Subtract line 12 from line 9, column 1)	\$5,205.34		
14. Monthly support payable (Enter the smaller line 11, column 1, or line 13, column 1 if line 13, column 1 is less than \$50.00, then a maximum order of \$50.00 is entered.)	\$1,052.90		
15. Presumptive child support obligation (If weekly, divide line 14 by 4.33; if bi-weekly, divide line 14 by 2.17; if monthly, enter same amount as in line 14.) ** ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR **			
Calculate	Weekly \$243.00	Bi-Weekly \$485.00	Monthly \$1,053.00

Prepared By: COURT Title: _____ Date: _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

CARROLL COUNTY

3rd CIRCUIT – FAMILY DIVISION – CONWAY

In the Matter of:
Steven Hoyt, Petitioner, and Lesley Hoyt, Respondent
Case No. 630-2009-DM-00143

ORDERS ON POST FINAL ORDER PLEADINGS OF BOTH PARTIES

The Court has received a lengthy and once again, well written Motion to Reconsider the Court's Order issued on March 13, 2017, by Steven Hoyt. The Motion was received by the Court on March 23, 2017. Ms. Hoyt has objected to Mr. Hoyt's Motion to Reconsider on March 27, 2017. She also filed a Motion to Reconsider on March 27, 2017, asking the Court to reconsider its decision not to award retroactive child support back to June of 2016, when the parties' child was emancipated. Mr. Hoyt then filed an Objection to Ms. Hoyt's Motion to reconsider alleging it was untimely on March 31, 2017. The Court specifically notes that it correctly applied the law concerning modification of alimony and the classification of post-divorce alimony as permanent even if it is for a set period of time.

The Court has reviewed all of the filed pleadings. The Court recognizes Steven Hoyt does not agree with the Court's finding regarding what is temporary and what is permanent alimony. The Court also recognizes Mr. Hoyt's other arguments he raises in his Motion to Reconsider, including the argument that the Court did not correctly calculate income for Ms. Hoyt. The Court specifically recognized it considered all of these arguments in its decision, and having reviewed both the pleadings and the Court's Orders determines it has not misapplied or misapprehended any facts or laws.

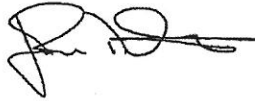
Ms. Hoyt's Motion to Reconsider is untimely. It would be denied on that ground alone, but the Court wants her to know it also considered her arguments raised in its decision. The Court does not believe it misapprehended or misapplied any fact or law in reaching its decision on the issues she raises in her Motion to Reconsider.

The Court hopes the parties can move on with each of their own lives and co-parenting with the best interest of all of their children in mind.

So Ordered,

April 5, 2017

Date



Judge John T. Pendleton