Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-378

JUNE TERM, 2005

Patricia Hartman	}	APPEALED FROM:
	}	
	}	
v.	}	Lamoille Family Court
	}	
Donal F. Hartman, Jr.	}	
	}	DOCKET NO. 116-6-01 Ledm

Trial Judge: Thomas J. Devine

In the above-entitled cause, the Clerk will enter:

Wife appeals the family court=s order granting husband=s motion to modify and substantially reducing his child support and maintenance obligations. We affirm the judgment in all respects, except that we remand the matter for the court to recalculate child support based on a corrected percentage of time the children spend with each parent.

The parties married in 1980 and moved to Vermont in 1987. During their marriage, they adopted two children, one born in April 1989, and the other born in March 1994. The parties separated in June 2001. Under the terms of their stipulated agreement, which was incorporated into the final divorce order, the parties agreed: (1) to share legal parental rights and responsibilities; (2) to give wife primary physical rights and responsibilities, with husband having parent-child contact for 43% of the time; (3) to divide the marital assets equally; and (4) to require husband to pay wife $715 per month in child support and $1285 per month in maintenance for seven years until he reached the age of 65.

In October 2002, when the parties were finalizing their stipulated agreement, husband was working as Deputy Commissioner of Corrections, a politically-appointed position paying at the time approximately $68,000 per year. Wife was also a state employee in a position paying approximately $52,000 per year. Both parties had additional income from their military careers. Shortly after a new Republican Governor of Vermont was elected in November 2002, husband received a letter requesting his resignation. Husband complied the following month. In March 2003, husband filed a motion to modify child support and maintenance, citing a significant loss of income. Following an evidentiary hearing, the family court granted the motion, reducing husband=s child support obligation to $35.43 per month and his maintenance obligation to $300 per month. On appeal, wife argues that the family court abused its discretion by finding changed circumstances and reducing husband=s support obligations after finding that he was voluntarily underemployed. Wife also argues that the court calculated child support based on an incorrect percentage of time the children spend with each parent. Husband opposes the first two claims of error, but agrees that, in calculating child support, the court mistakenly transposed two numbers and factored in a 53%-47%, rather than a 57%-43%, allocation of the children=s time between the parents.

Wife first argues that because husband=s loss of employment was both anticipated and voluntary, the family court erred in determining that he met his threshold burden of demonstrating a real, substantial, and unanticipated change of circumstances. 15 V.S.A. " 660, 758. According to wife, husband=s loss of employment was anticipated in that he knew he would not be retained in his position if a new Republican governor won the election, and, in any event, he had a tenuous relationship with the acting commissioner. We find no abuse of discretion. See deBeaumont v. Goodrich,

162 Vt. 91, 98 (1994) (family court=s threshold determination of whether changed circumstances exist is discretionary and will be upheld unless made upon unfounded considerations or unreasonable in light of evidence). The court found that husband had a good working relationship with the commissioner, and that, while he had no illusions about the possibility of being let go if a Republican won the election, he hoped that he could retain his job or another comparable position regardless of the outcome of the election, given his long years of public service and good relationship with key personnel, including the newly elected Governor. In short, although husband recognized the possibility of being ousted if a Republican were to win the election, he did not anticipate such a result. There is evidence in the record to support the findings and conclusions of the trial court, which is in the best position to determine the credibility of the witnesses. See Wardwell v. Clapp, 168 Vt. 592, 595 (1998) (mem.).

Wife argues, however, that even if husband=s loss of employment was unanticipated, it was voluntary because: (1) he failed to indicate in his letter of resignation that he was interested in another position within the administration; (2) he failed to follow up on certain job prospects that wife made known to him; and (3) despite his extensive legal experience, he sought relatively low-paying teaching jobs. We find this argument unavailing. The evidence supports the family court=s conclusion that husband=s termination was involuntary, thereby satisfying the threshold requirement of showing changed circumstances. The record does not suggest that husband could have worked in the new administration in another comparable position. Indeed, the court found that husband unsuccessfully contacted the newly elected Governor=s chief of staff about other positions within the administration. The court acknowledged that, after failing to obtain a comparable public service position, husband began looking for teaching jobs rather than potentially more lucrative private law jobs. Accordingly, the court determined that husband was voluntarily underemployed, but concluded that even if husband had more diligently pursued employment in the field of law, he would have faced a significantly reduced income, thereby conferring jurisdiction upon the court to review the support awards. See Sylvia v. Sylvia, 146 Vt. 596, 597 (1986) (AThe loss of an anticipated employment qualifies as an unanticipated change of circumstances.@). We find no error.

According to wife, however, upon finding that husband was voluntarily underemployed, the family court was required to deny his motion to modify child support and maintenance. We disagree. The court imputed income to husband in the amount of $40,000 beyond the retirement income he was receiving from the State and the military. On appeal, wife does not even acknowledge, let alone challenge, the court=s determination that $40,000 is a realistic assessment of what husband could earn in the legal field, given his background. The court modified husband=s support obligations after carefully examining the parties= respective incomes (including husband=s imputed income) and needs. Other than the percentage of time the children spend with each parent, wife does not dispute any of the figures that the court relied upon in determining husband=s support obligations. Rather, wife argues only that the court had no choice but to deny husband=s motion outright once it determined that he was voluntarily underemployed.[*] We reject this argument, for which wife cites no legal support.

The family court=s August 13, 2004 order is affirmed in all respects, except that the child support order is reversed, and the matter is remanded for the court to recalculate husband=s child support obligation based on husband having the children forty-three (rather than forty-seven) percent of the time.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

---

[*] Notably, wife states that the parties= stipulation was part of a comprehensive agreement addressing issues concerning their children, property, and support needs, but she does not argue that a portion of the maintenance agreed to in the stipulation was compensatory in nature. See Strauss v. Strauss, 160 Vt. 335, 338-39 (1993) (in long-term marriage, maintenance may serve to compensate homemaker for contributions to family well-being not otherwise recognized in property distribution).