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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-418

MAY TERM, 2005

Alison (Clark) McWilliams	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Thomas B. Clark	}	
	}	DOCKET NO. 74-1-92 Cndm
		Trial Judge: Mark Keller

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

Mother appeals from a family court order affirming a magistrate's decision to deny her emergency motion to stay child support. Mother contends the child support order was invalid because the court failed to review the adequacy of the order with reference to the child support guidelines. We affirm.

This is the second appeal in this matter. The basic facts are set forth in Clark v. Clark, 172 Vt. 351 (2001). The parties were married in 1980 and divorced in 1993. Pursuant to the parties' stipulation, mother was awarded parental rights and responsibilities for the parties' two children, and sole possession of her interest in her father's estate and a testamentary trust established by her father. The parties subsequently stipulated that father would pay child support of $600 per month, but mother later moved to modify child support, and the court granted the order, increasing the amount to $1707 per month. We affirmed the order on appeal, holding that the court had properly declined to impute income to mother from certain income producing investments. Id. at 354.

The events underlying the current appeal involve a tangled procedural history, which may be summarized as follows. In the summer of 2002, the parties agreed that their younger child, who was sixteen years old at the time, could move from mother's residence in Virginia to live with father in Vermont and attend Champlain Valley Union High School for the 2002-2003 school year. In September 2002, father moved to modify parental rights and responsibilities, based on the child's physical residence with him in Vermont, and in November father moved to modify child support. Thereafter, the parties entered into a written agreement in which mother agreed to pay child support of $1000 per month. The agreement recites that the parties agreed "to this child support order without worksheets because [mother] has a very complicated financial situation which resulted in years of litigation in prior child support hearings, including huge attorney's fees," and that given the child's age (16), further protracted discovery and litigation "makes no sense." Both parties and their respective attorneys signed the agreement in December and January 2003, but father's counsel inadvertently failed to file it with the court.

A hearing was held on father's motion to modify parental rights and responsibilities in February 2003. Mother appeared by telephone, although no evidence was taken by the court. Mother's attorney represented to the court that mother had agreed to a proposed stipulated order granting father primary parental rights and responsibilities for the minor child. The agreement submitted to the court had been signed by father and his attorney, but not by mother or her lawyer. Immediately after the hearing, mother fired her attorney and wrote two letters to the court (Judge Levitt) requesting that she not sign the order and seeking a new hearing on the motion to modify parental rights and responsibilities. Nevertheless, on February 24, 2003, the court signed the order, which also contained a provision requiring mother to pay child support of $1000 per month pursuant to an undated child support order. Mother's letters

to the court did not challenge or seek to set aside the child support obligation.

The court subsequently agreed to treat mother's letter as a request for relief from judgment, held a hearing on April 30, 2003, and granted the requested relief to set aside the order. At no point during the hearing did mother challenge or seek to modify or set aside the child support agreement. Shortly thereafter, the court entered a temporary order, dated June 18, 2003, incorporating the terms of the set-aside February order, including the requirement that wife pay child support of $1000 per month. The temporary order provided that wife shall pay child support of $1000 per month "pursuant to the Child Support Order dated November 18, 2002, until further order of the Court." The reference to the November 18, 2002 order was plainly a mistake, as the only order of that date was a stipulated order terminating father's obligation to pay child support.

Mother filed a motion to set aside the temporary order, which the court denied, stating that it was designed "to maintain the status quo and provide stability for the child." Although mother had been paying $1000 per month in child support, she unilaterally stopped payments in May 2003. In June or July, she was apparently informed by the Office of Child Support that the June 18, 2003 temporary order had been registered as an order for support and that she was subject to the arrearage judgment lien procedures set forth in 15 V.S.A. §§ 791 and 793. In response, in August 2003, mother filed an "emergency motion to stay child support," citing the temporary order's mistaken reference to the November 18, 2002 order. The magistrate denied the motion, stating that confusion about the date or contents of the prior order was insufficient grounds to stay the obligation.

Mother then filed a motion to reconsider, which resulted in a hearing before the magistrate on October 27, 2003. Mother argued that there was no existing valid support order, but the magistrate concluded that mother had failed to satisfy the requirements for a stay of the June order, noting that mother and her attorney had signed the January 2003 child support agreement under which she had been making payments until May, that the motion to set aside the subsequent February order was addressed solely to mother's disagreement with the parental rights and responsibilities provision, not the child support agreement, and that the temporary June 2003 order, while mistakenly referencing a prior order, nevertheless contained a provision requiring continued payment of $1000 per month, as provided in the parties' agreement.

At the hearing on the motion for reconsideration, mother raised the additional argument that a child support agreement must be reviewed by the court with reference to the child support guidelines, and requested an evidentiary hearing on the parties' respective incomes. The magistrate denied the request and approved the parties' child-support agreement, noting that the parties had specifically waived the guidelines and the submission of financial information in their child support agreement, and that mother remained free in any event to file a motion to modify child support and adduce evidence of her income to show that the $1000 monthly payment deviated from the guideline amount. Mother appealed the magistrate's ruling. Following a hearing in March 2004, the court affirmed. This appeal followed.

Mother renews her contention that a child support agreement does not relieve the court of its obligation to calculate child support with reference to the support obligation under the child support guidelines. See 15 V.S.A. § 655 ("The court shall review the adequacy of a child support amount agreed to by the parties with reference to the total support obligation."). We agree that the family court should generally review child support agreements with reference to the support guidelines, and review any substantial deviation from the guidelines, Ainsworth v. Ainsworth, 154 Vt. 103, 114 (1990), but we are not persuaded that the child support agreement in this case was invalid because it was later approved by the court without holding an evidentiary hearing. As noted, mother expressly agreed to the $1000 per month child support obligation "without worksheets" because of her "complicated financial situation" and to avoid the "huge attorney's fees" that would presumably result from discovery disputes over disclosure of her full financial picture. Indeed, we note from the docket entries that mother did file such a motion, in November 2003, but voluntarily dismissed the motion after the magistrate ordered her to disclose tax returns for her trust and her children's trusts. Furthermore, the proceedings were not held in a vacuum, the parties and their respective financial circumstances having been previously litigated, so that the $1000 monthly child support obligation plainly represented, as the magistrate observed, a reasonable "compromise figure."

Thus, the court here properly reviewed the stipulation and was warranted in finding that the parties' desire to

avoid discovery and protracted litigation was a sufficient basis to award child support without reference to the guidelines. Furthermore, we do not believe that mother may retroactively invalidate the agreement on the ground that the court failed to review her financials when she expressly waived financial disclosure for her own benefit. State v. Longe, 170 Vt. 35, 40 n.* (1999) (party may not induce court ruling and later seek to set it aside as error). Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice