

SUPREME COURT OF NEW JERSEY

No. #076227

Prasad Kummarapurugu,
Plaintiff-Appellant

vs.

Thota Padmini,
Defendant-Respondent

Civil Action

PETITION FOR CERTIFICATION TO
THE SUPREME COURT OF NEW JERSEY
FROM A FINAL JUDGMENT OF THE
SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION DOCKET NO.
A-3656-13T4

SAT BELOW:
Hon. Catherine Fitzpatrick, PJFP
Hon. Allison E. Accurso, J.A.D.
Hon. Thomas V. Manahan, J.A.D.

Petition for certification and appendix

The Law Office of
David Perry Davis
112 West Franklin Ave
Pennington NJ 08534
(609) 737-2222
Attorney for petitioner

David Perry Davis, Esq.
On the petition

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Statement of the matter involved

The issue before the court is extraordinarily simple.

In response to plaintiff's *pro se* application to modify child support, the trial court in essence made a scrivener's error, entering the wrong information into the computer software. It thus imposed an obligation \$5,772 per year higher than the guidelines award. As the child was nine years old, this would result in an overpayment in excess of \$65,000 over the period of his minority. There was no dispute as to the data that should have been used. Both parties are W-2 employees. Defendant's income was \$2,019 per week. The trial court entered \$1,549 per week into the software. All the orders in the court's file correctly included plaintiff's 104 annual overnights with the child. The trial court calculated support based on 52 overnights. In their Marital Settlement Agreement, the parties had reached an agreement concerning a credit for medical insurance premiums. The trial court disregarded it without a change in circumstances even being alleged by either party.

Plaintiff then retained counsel. Out of time to file for reconsideration, plaintiff appealed, submitting an appellate brief that was, in its entirety, 10 pages long and clearly set out the above errors.

The Appellate Division held that plaintiff's "principal

argument is that it is unfair to have his child support amount modified as the court failed to consider the appropriate child support guideline factors." This is not accurate. Plaintiff certainly did not argue that "it is unfair to have his child support amount modified" — he is the one who applied for the modification. Plaintiff did not argue that "the court failed to consider the appropriate child support guideline factors." A trial court considers statutory factors only when it is calculating a support obligation wherein the guidelines do not apply. Plaintiff in fact stated that the trial court had erroneously copied completely uncontested information from the record before it into the computer software.

Plaintiff filed a motion for reconsideration in the Appellate Division, which was denied without comment.

The Supreme Court should allow certification in this matter, at least to the extent required to consider a motion for a summary remand for correction of the errors. The point of the enactment of the child support guidelines was to bring stability and predictability to awards where there are no grounds to deviate from a guidelines determination. It is a matter of public importance that the court rules and statute setting forth how child support should be determined be respected and adhered to.

Questions presented

- I. Did the trial court err by failing to enter correct information into the child support guidelines software?

- II. Did the Appellate Division err by characterizing plaintiff's appellate argument as a complaint that the trial court failed to consider "appropriate child support guideline factors"?

- III. Did the Appellate Division err by denying without comment plaintiff's application for reconsideration?

The reasons why certification should be allowed

While the issue is extremely simple, it implicates the proper functioning of our court system. Neither the appellate brief, the trial court record, nor the motion for reconsideration to the appellate division are lengthy.

On the one hand, this matter hardly seems worthy of the attention of the Supreme Court of New Jersey. One cannot imagine an argument which would consist entirely of saying "Justices, the trial court entered the wrong information into the support guidelines software. This was unfair and resulted in a support obligation far in excess of what the law requires. Please remand with instructions that the correct information be utilized. Thank you and that concludes my presentation."

On the other hand, the public and the bar need to be able to rely on the system functioning properly, especially on an issue as basic as the correct entry of information into software.

Perhaps more importantly, the public and the bar need to be able to rely on the court system's ability to correct an error when one occurs through the Appellate process. Neither of these occurred here.

The result of the trial court's error and the Appellate Division's failure to rectify it is more than simply Mr. Kummarapurugu being required to pay support far beyond what the law says is fair, it is that the system did not function.

In sum, this is a matter of simple justice.

Comments on the Appellate Division Opinion

Absent a basis to deviate from their application, child support is to be established pursuant to the New Jersey child support guidelines. Rule 5:6A provides:

The guidelines set forth in Appendix IX of these Rules shall be applied when an application to establish or modify child support is considered by the court. The guidelines may be modified or disregarded by the court only where good cause is shown. Good cause shall consist of a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) the fact that injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court. Pressler, 2014 Rules Governing the Courts of the State of New Jersey, Appendix IX-A. See also, N.J.S.A. 2A:34-23.1.

The Appellate Division noted this basic tenant of the law, correctly holding that "A court may deviate from the [Guideline only when good cause demonstrates that [their] application . . . would be inappropriate." (Slip Opinion at 6, 22a). In the matter before this court, there was no application made to deviate from the guidelines, nor were there grounds to do so.

The trial court's order purported to apply the guidelines (13a-16a). However, it had misread the uncontested facts in the

record as to the parties' incomes, the number of overnights with each parent, and the parties' agreement as to the cost of medical insurance. When the information supplied to the software is not correct, the resulting obligation does not reflect the guidelines obligation that must be imposed in the absence of a finding that deviation is appropriate.

Plaintiff's appeal sought a remand to the trial court for it to supply the correct information and to apply the guidelines obligation.

For the Appellate Division to summarize plaintiff's contention on appeal by stating that its "principal argument is that it is unfair to have his child support amount modified as the court failed to consider the appropriate child support guideline factors" is not a fair reading of the arguments raised. When there is a basis to do so, courts may deviate from the guidelines if the justification for this decision is placed on the record. Lozner v. Lozner, 388 N.J. Super. 471, 480 (App. Div. 2006) (citing Ribner v. Ribner, 290 N.J. Super. 66, 73 (App. Div. 1996) (emphasis added)). When a court deviates, it is required to establish support based on the factors set out in N.J.S.A. 2A:34-23.1. Here, there was no request to deviate and no grounds to do so. Hence, there were no statutory factors at issue.

To the extent necessary to entertain an application for summary remand, this court should grant this petition for certification.

Certification of Counsel

I hereby certify that the petition for certification in this matter presents a substantial question and is filed in good faith and not for purposes of delay. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

David Perry Davis, Esq.

DATED:

The Law Office of
David Perry Davis
112 West Franklin Ave
Pennington NJ 08534
(609) 737-2222
(609) 737-3222 (fax)
Attorney ID: 047451996
Attorney for plaintiff


| | | |
|-----------------------|---|-----------------------------|
| Prasad Kummarapurugu, | : | SUPREME COURT OF NEW JERSEY |
| | : | DOCKET NO. |
| Plaintiff-Appellant | : | |
| | : | <u>Civil Action</u> |
| vs. | : | |
| | : | |
| Thota Padmini, | : | NOTICE OF PETITION |
| | : | FOR CERTIFICATION |
| Defendant-Respondent | : | |
| | : | |

TO: Clerk of the Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street | PO Box 970
Trenton, NJ 08625-0970

Clerk of the Appellate Division
Superior Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street | PO Box 006
Trenton, NJ 08625-0006

Padmini Thota
606 Deerbrook Drive
Yardley, PA 19067

PLEASE TAKE NOTICE that plaintiff shall petition the Supreme Court for an Order certifying the entire judgment entered by the Appellate Division in the above matter on May 21, 2015 and the Order denying reconsideration entered by the Appellate Division in the above matter on June 12, 2015 (Received June 19, 2015). The filing fee is enclosed herewith.

Respectfully submitted,

David Perry Davis, Esq.

Date: June 22, 2015

The Law Office of
David Perry Davis
112 West Franklin Ave
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(609) 737-2222
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Attorney ID: 047451996
Attorney for plaintiff

| | | |
|-----------------------|---|-----------------------------|
| Prasad Kummarapurugu, | : | SUPREME COURT OF NEW JERSEY |
| | : | DOCKET NO. |
| Plaintiff-Appellant | : | |
| | : | <u>Civil Action</u> |
| vs. | : | |
| | : | |
| Thota Padmini, | : | PROOF OF SERVICE |
| | : | |
| Defendant-Respondent | : | |
| | : | |

Robin Henderson, of full age, hereby certifies as follows:

1. I am a paralegal employed by the Law Office of David Perry Davis, attorney for plaintiff in this matter.
2. On this date, I caused a copy of the enclosed documents and this Proof of Service to be served upon the following:


Clerk of the Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street | PO Box 006
Trenton, NJ 08625-0006

Clerk of the Appellate Division
Superior Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street PO Box 006
Trenton, NJ 08625-0006

Padmini Thota
606 Deerbrook Drive
Yardley, PA 19067
By Certified mail, RRR (one copy)
By Regular mail (one copy)

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

DATED: 6/23/13



Robin Henderson

The Law Office of
David Perry Davis
112 West Franklin Ave
Pennington NJ 08534
(609) 737-2222
(609) 737-3222 (fax)
Attorney for plaintiff-appellant

| | | |
|----------------------|---|------------------------------|
| Prasad Kumarapurugu | : | SUPERIOR COURT OF NEW JERSEY |
| | : | APPELLATE DIVISION |
| Plaintiff-Appellant | : | DOCKET NO. A-3656-13T4 |
| | : | |
| vs. | : | <u>Civil Action</u> |
| | : | |
| Padmini Thota, | : | NOTICE OF MOTION |
| | : | <i>(Post-disposition)</i> |
| Defendant-Respondent | : | |
| | : | |

PLEASE TAKE NOTICE that, on a time and date fixed by the Appellate Division, the undersigned shall move for an Order:

A. Reconsidering the court's May 21, 2015 decision;

B. For such further relief as the court may deem equitable and just.

Appellant shall rely on the enclosed letter brief. Telephonic oral argument is requested in the discretion of the Court.


David Perry Davis, Esq.

DAVID PERRY DAVIS

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A Professional Corporation

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(609) 737-2222

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(609) 737-3222

May 26, 2015

Hon. Allison E. Accurso, J.A.D.
Hughes Justice Complex
25 Market Street
Trenton, NJ 08625-0977

Hon. Thomas V. Manahan, J.A.D.
Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903-0112

Re: Kummarapurugu v. Thota
Docket No. A-3656-13T4

Dear Judges Accurso and Manahan:

Please accept this letter brief in lieu of a more formal submission in support of plaintiff's application for reconsideration of the court's May 21, 2015 decision (Exhibit A).

As may not have been clearly argued, the issue is the trial court's mistaken copying of numbers, and errors as to the relevant and completely uncontested information needed so the court's software could properly determine child support in this guidelines case. The Appellate Division's decision treats this matter as if it were an off-guidelines case. This warrants reconsideration of the decision.

The implementation and use of the guidelines reflects a strong public policy in favor of bringing stability and predictability to child support awards. Rather than requiring the weighing of 10 statutory factors in every case, which could lead to greatly varying awards, a court enters information into court-approved software, which calculates the parent's support

obligation.¹ It is vital that counsel and the parties be able to rely on their accuracy or their purpose is defeated.

A. The court mistakenly ran the support obligation on the wrong worksheet (sole instead of shared).

Appellant takes no issue with the facts as recounted by the Appellate Division. As indicated, "the parties . . . are the parents of one child and **share custody...**" (Emphasis added). However, the decision then notes "In the determination of the child support amount, the [trial] court held:

After receiving the parties' submissions the Court ran a **sole parenting worksheet** based on the documentation provided." (Slip Op. at 1-2, emphasis added).

In the parties' initial judgment of divorce and in a subsequent recalculation (Pa 15), the court applied the shared parenting worksheet as all the factors required to apply it are present. There was no request to modify this provision in defendant's opposition to the motion below nor in her appellate brief. The court's unexplained decision to nonetheless utilize the sole parenting worksheet, and without so much as an *allegation* of a change in circumstances, was error.

B. The court mistakenly provided the software with the wrong number of overnights (52 instead of 104).

The parties agree (and this court's May 21 opinion accurately notes at page 1) that they share custody of Abhiram. Mr. Kummarapurugu picks his son up from school on alternating

¹ A court can depart from the guidelines for good cause, however the trial court's decision purports to comply with them and, in any case, none of the factors supporting deviation were present.

Thursdays and brings him back to school on Friday mornings (Pa 92). The following week, Mr. Kummarapurugu picks Abhiram up from school on Fridays and brings him back to school on Monday mornings (Pa 92). Holidays and other special days are shared (Pa 96, 102, 203). Mr. Kummarapurugu provides Abhiram with a bedroom at his home and incurs (without complaint) all the related costs involved in parenting him. Shared parenting, by definition, means that Abhiram has two homes. The guidelines take these costs into account. None of these facts were contested below.

However, the opinion notes "the Court calculated plaintiff's overnights at fifty-two per year" (Slip op. at 2, emphasis added). The record is replete with references to Mr. Kummarapurugu having at least 104 overnights per year (Pa 9, 12, 15, 203). Neither party contested this fact below. The motion judge's entry of fifty-two overnights per year into the guidelines software was a simple mistake. There is nothing in the record supporting the use of fifty-two overnights for support purposes.

- C. The trial court made a math error. Defendant's income of 104,988 ÷ 52 weeks is indisputably 2,019, not the 1,549 entered into the software by the trial court.

Next, the opinion noted that "the Court calculated defendant's income at \$1,549 per week or \$80,000 per year." (Slip op. at 2). At the time of the motion, defendant in fact earned \$104,988 per year. There were no questions as to either party's income. Both are W-2 employees. Defendant's income was \$104,988 per year, or \$2,019 per week (1T 24:19, Pa 251). This was confirmed by the submission of her paystub (Pa 67) and was never

questioned by either party nor by the motion judge (Pa 251, 2T). Nonetheless, the trial court entered \$1,549 per week in the line for defendant's income. The record is devoid of any support for this entry.

- D. The trial court erroneously included a contribution for defendant's medical insurance after the parties agreed and the court had previously ordered that no such credit would be included.

Next, the opinion notes that the guidelines calculation "included defendant's contribution for medical insurance." (Slip op. at 2-3). Yet, it was uncontested below that defendant had agreed in the parties' Property Settlement Agreement that she would not seek this credit (Pa 218 at ¶6):

6. FURTHER ORDERED that the parties have agreed on the record that the child's share of the health insurance premium paid by the Defendant will not be included in the future recalculation of child support per the terms of their PSA.

- E. The net result of the errors was an unfair support amount that does not comport with the guidelines in spite of the trial court's statement that they were being applied.

As a result of the trial court's mistakes, Mr. Kummarapurugu is paying roughly \$6,000 per year more in child support than the guidelines require,² while also covering all the expenses associated with co-raising his child. Also, it was uncontested that plaintiff is remarried, has a son with his current wife and

² As the child at issue is 10 years old, this will result in an overpayment of about \$48,000 - \$64,000 over the life of the child.

his current wife was unemployed (246, 1T 14:24 - 15:1, Pa 246). Defendant, by contrast, lives in a two income household (1T 16:12 - 16:13, Pa 247).

More basically, the issue is whether the public policy in favor of the use of the guidelines should persuade the Appellate Division that a trial court's indisputable mistakes in providing correct information to the software warrants remanding for the errors to be corrected.

I. THE APPELLATE DIVISION SHOULD RECONSIDER ITS DECISION WHERE IT MISTAKENLY PROCEEDED AS IF THIS WERE NOT A GUIDELINES CASE.

The decision states that, on appeal, Mr. Kummarapurugu's "principal argument is that it is unfair to have his child support amount modified as the court failed to consider the appropriate child support guideline factors." (Slip op. at 3). This is not the argument that was raised, either below or on appeal. Plaintiff presented no objection to his support obligation being modified - he is the one who sought the modification. There was no argument or even mention (below or in the Appellate Division) as to the (statutory) "factors" being applied; this was and is supposed to be a straight guidelines case. The issue presented was that the court did not provide the child support guidelines software with the information that is contained in the record. There were no contrary numbers anywhere in the record. There was no testimony on these issues. There were no credibility calls.

The opinion then states "in opposition, defendant argues the judge made sufficient fact findings to justify the child

support award." This is not the argument that was raised, either below or on appeal. No argument was presented below that the court should deduct \$470 per week from her current income or that sufficient facts were in the record to justify such a decision. On appeal, defendant argued that the court may have performed some type of income averaging (Db at 9). The record does not contain any reference whatsoever to income averaging, nor would it be appropriate in a matter where there was a simple change to a higher paying job, not a fluctuating income.

As the opinion notes, the role of the Appellate Division is limited. This court should "not disturb the factual findings and legal conclusions of the trial judge unless [it is] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare v. Cesare, 154 N.J. 394, 412 (1998).

This is not a matter where evidence was weighed and conflicting claims between parties resolved via an application of facts to the statutory factors. There were no conflicting claims below. The record is established by cold documents, submitted by the parties in response to an order so the guidelines could be re-run to take into account plaintiff's afterborn child. A math error was then made as to defendant's income, uncontested numbers were copied incorrectly, the number of overnights halved without explanation, and the software was otherwise provided with data that directly contravenes the only information in the record. Respectfully, this is not a matter of discretion. It is a matter

of error that resulted in a support award not in accordance with the guidelines.

The information used to run the Child Support Guidelines software was "manifestly unsupported by or inconsistent with [all] the competent, relevant and reasonably credible evidence."

As this court's decision correctly sets out:

The Supreme Court established presumptive Guidelines, and corresponding factors, to calculate child support. Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A at 2625-2647. "A court may deviate from the [G]uidelines only when good cause demonstrates that [their] application . . . would be inappropriate." Lozner v. Lozner, 388 N.J. Super. 471, 480 (App. Div. 2006) (citing Ribner v. Ribner, 290 N.J. Super. 66, 73 (App. Div. 1996) (emphasis added)).

Here, the trial court did not purport to deviate from the guidelines. There was no basis to deviate. The trial court claimed that it was applying the guidelines, but then provided the software with incorrect data, contrary to the only information contained in the record.

The Appellate Division's decision went on to cite numerous cases, none of which address the issue of a court essentially committing a scrivener's error in entering data into the child support guidelines software. See, Foust v. Glaser, 340 N.J. Super. 312, 315 (App. Div. 2001) (Lepis threshold not met without establishing "starting point" for change in circumstances analysis); Pascale v. Pascale, 140 N.J. 583, 594 (1995) (court has discretion in determining support when income exceeds guidelines); J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (incomes

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exceeding guidelines and special needs trust issues); Loro v. Colliano, 354 N.J. Super. 212 (App. Div. 2002) (calculation of support when incomes are over the guidelines); Ribner v. Ribner, 290 N.J. Super. 66, 73 (App. Div. 1996) (guidelines *shall* be applied absent a basis to deviate (*Emphasis in original*)).

One case cited by the court could not be more on point. In Lozner v. Lozner, 388 N.J. Super. 471, 480 (App. Div. 2006) the Appellate Division reversed where, among other things, the trial court "found that defendant's net weekly income was \$1,501.31, when, in fact, the judge had previously calculated defendant's net weekly income as \$1,720, based on a net annual income of \$89,447.82." Ibid. (Emphasis added). This is almost the precise facts and the same law at issue here: A math error as to the calculation of a parties' income and errors as to the running of the guidelines. In Lozner, the Appellate Division remanded for a correction so the guidelines could be properly run and support accurately determined.

Finally, the decision affirmed the trial court's delay of **seven months** from the July 8, 2013 filing of Mr. Kummarapurugu's application to modify support to the issuance of the order on February 12, 2014.

This court did not disturb this decision as it found no error in the trial court providing the guidelines software with data that was contrary to the only information contained in the record. It is respectfully submitted that, if this court now recognizes that this was not in fact an off-guidelines

calculation but a misreading of the record and a math error, the equities of failing to make the support adjustment effective as of the date of the filing of Mr. Kummarapurugu's application will also be revisited. The parties turned in all the information requested of them promptly. The trial court found that the birth of plaintiff's son constituted a change in circumstances, but nonetheless took seven months to issue a new support order. But for the strictures of N.J.S.A. 2A:17-56.23a, equity would dictate that a modification should be effective as of the date that changed circumstances occurred.

Conclusion

As the Ribner court (along with all other legal authority) found, the guidelines should have been applied and the failure to provide the software with accurate information resulted in a departure in spite of the motion judge's determination that support was being determined based on the guidelines. As in Lozner, when the Appellate Division is presented with a simple error, it should remand for correction.

For the above reasons, the court's May 21, 2015 decision should be reconsidered.

Respectfully,



David Perry Davis, Esq.

Cc: Prasad Kummarapurugu (Via PDF)
Padmini Thota (By regular and certified mail, RRR)

PREPARED BY THE COURT

FEB 17 2014

Handwritten signature

SHIRLEY REGAN
Deputy Clerk of Superior Court

Handwritten signature: Shirley Regan

SHIRLEY REGAN
DEPUTY CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION -
FAMILY PART
MERCER COUNTY

Prasad Kummarapurugu,
Plaintiff,

v.

Padmini Thota,
Defendant.

DOCKET NO. FM-11-213-06 K
CS42755093A

CIVIL ACTION

ORDER

THIS MATTER being opened by the Court, sua sponte, on February 12, 2014 for a recalculation of child support after having received additional financial documentation, pursuant to the Court's October 31, 2013 order, from the plaintiff, Prasad Kummarapurugu, a self-represented litigant and the defendant, Padmini Thota; and for good cause shown;

IT IS on this 12th day of February, 2014:

- 1) **ORDERED** that the plaintiff's child support obligation shall be modified to \$272 per week, effective February 12, 2014.

Handwritten signature: Catherine Fitzpatrick
CATHERINE FITZPATRICK, P.J.F.P.

Pursuant to R. 1:6-2(f), the Court provides the following Statement of Facts and Conclusions of Law:

On October 31, 2013 the Court granted in part plaintiff's application for an order modifying his child support obligation, considering his parenting time and his other

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Handwritten initials/signature

defendant son. The Court ordered that support would be recalculated, but only upon receipt of additional documentation from each party. Specifically the plaintiff was ordered to provide the Court, with a copies of (1) his W-2 forms for 2012, 2011 and 2010, (2) documentation indicating whether his pension contributions are mandatory, (3) proof of his current wife's most recent income, and a (4) copy of his bonus check for 2012 and 2013 if received.

The defendant was also ordered to submit documentation. Specifically the defendant was ordered to provide copies of (1) her 2012 W-2 form and (2) proof of the cost of medical coverage for the parties' child.

After receiving the parties' submissions the Court ran a sole parenting worksheet based on the documentation provided. The Court averaged the plaintiff's bonuses and calculated his income at \$2,750.00 per week, or \$143,000 per year. The Court calculated defendant's income at \$1,549.00 per week or \$80,000 per year. The Court calculated plaintiff's overnights at 52 per year, included defendant's contribution for medical insurance, and plaintiff's other dependent deduction. Based on all those factors, the plaintiff's child support obligation shall be modified to \$272 per week, effective February 12, 2014. The child support guideline is attached thereto and made apart hereof as schedule A.

CHILD SUPPORT GUIDELINES - SOLE PARENTING WORKSHEET

Case Name:

KUMMARAPURUGU PRASAD THOTA PADMINI
K

Plaintiff

vs.

Defendant

County : 011-MERCER COUNTY

Case ID : CS42755093A

Docket #: FM-11-000213-06

Number of Children: 1

Custodial Parent Is the : Plaintiff Defendant

| <i>All amounts must be weekly</i> | CUSTODIAL | NON-CUSTODIAL | COMBINED |
|--|-------------|---------------|-------------|
| 1. Gross Taxable Income | \$ 1,549.00 | \$ 2,750.00 | |
| 1a. Mandatory Retirement Contributions (non-taxable) | -\$ 0.00 | -\$ 0.00 | |
| 1b. Alimony Paid (Current and/or Past Relationships) | -\$ 0.00 | -\$ 0.00 | |
| 1c. Alimony Received (Current and/or Past Relationships) | +\$ 0.00 | +\$ 0.00 | |
| 2. Adjusted Gross Taxable Income ((L1-L1a-L1b)+L1c) | \$ 1,549.00 | \$ 2,750.00 | |
| 2a. Federal, State and Local Income Tax Withholding | \$ 419.00 | \$ 716.00 | |
| 2b. Prior Child Support Orders (Past Relationships) | -\$ 0.00 | -\$ 0.00 | |
| 2c. Mandatory Union Dues | -\$ 0.00 | -\$ 0.00 | |
| 2d. Other Dependent Deduction (from a separate worksheet) | -\$ 0.00 | -\$ 412.00 | |
| 3. Net Taxable Income (L2-L2a-L2b-L2c-L2d) | \$ 1,130.00 | \$ 1,622.00 | |
| 4. Non - Taxable Income (source:) | +\$ 0.00 | +\$ 0.00 | |
| 5. Government (Non-Means Tested) Benefits for the Child | +\$ 0.00 | +\$ 0.00 | |
| 6. Net Income (L3+L4+L5) | \$ 1,130.00 | \$ 1,622.00 | \$ 2,752.00 |
| 7. Each Parent's Share of Income (L6 Each Parent/L6 Combined) | 0.41 | 0.59 | 1.00 |
| 8. Basic Child Support Amount (From Appendix IX-F Schedules) | | | \$ 412.00 |
| 9. Net Work-Related Child Care (From Appendix IX-E Worksheet) | | | +\$ 0.00 |
| 10. Child's Share of Health Insurance Premium | | | +\$ 35.00 |
| 11. Unreimbursed Health Care Expenses over \$250/child/year | | | +\$ 0.00 |
| 12. Court-Approved Extraordinary Expenses | | | +\$ 0.00 |
| 13. Total Child Support Amount (L8+L9+L10+L11+L12) | | | \$ 447.00 |
| 14. Each Parent's Share of the Support Obligation (L7 x L13) | \$ 183.00 | \$ 264.00 | |
| 15. Government Benefits for the Child Based on Contribution of NCP | | -\$ 0.00 | |
| 16. Net Work-Related Child Care Paid | | -\$ 0.00 | |
| 17. Health Insurance Premium for the Child Paid | | -\$ 0.00 | |
| 18. Unreimbursed Health Care Expenses Paid (>\$250/child/year) | | -\$ 0.00 | |
| 19. Court-Approved Extraordinary Expenses Paid | | -\$ 0.00 | |
| 20. Adjustment for Parenting Time Expenses (L8 x L20b for Non-Custodial Parent x 0.37). <i>Note: Not presumptive in some low income situations (see App.IX-A., 13).</i> | | -\$ 21.00 | |
| 20a. Number of Overnights with Each parent | 313 | 52 | 365 |
| 20b. Each Parent's Share of Overnights with the Child (L20a for Parent / L20a Combined) | 0.86 | 0.14 | 1.00 |
| 21. Net Child Support Obligation (L14-L15-L16-L17-L18-L19-L20) | | \$ 243.00 | |

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[Handwritten Signature]

CHILD SUPPORT GUIDELINES - SOLE PARENTING WORKSHEET - PAGE 2

| <i>All amounts must be weekly</i> | CUSTODIAL | NON-CUSTODIAL | COMBINED |
|---|-------------------------------------|-------------------------------------|---|
| <i>If neither parent is requesting the other-dependent deduction, go to line 25.</i> | | | |
| 22. Child Support Order WITH Other-Dependent Deduction | | \$ 243.00 | |
| 23. Child Support Order WITHOUT Other-Dependent Deduction | | \$ 301.00 | |
| 24. Adjusted Child Support Order ((L22 + L23) / 2) | | \$ 272.00 | |
| 25. Self-Support Reserve Test (L6 - L21 or L24 for NCP; L6 - L14 for CP). If L25 for NCP is greater than 105% of the federal poverty guideline for one person (pg) or L25 for CP is less than pg, enter L21 or L24 amount on L27. If L25 for NCP is less than the pg and L25 for CP income is greater than the pg, go to L26. (The pg for Tax Year 2013 is 232) | \$ 947.00 | \$ 1,350.00 | |
| 26. Obligor Parent's Maximum Child Support Obligation (L6 NCP income - 105% of federal poverty guideline for one person). Enter result here and on Line 27. | | \$ 0.00 | |
| 27. Child Support Order | | \$ 272.00 | |
| COMMENTS, REBUTTALS, AND JUSTIFICATION FOR DEVIATIONS | | | |
| 1. The child support order for this case <input checked="" type="checkbox"/> was <input type="checkbox"/> was not based on the child support guidelines award. | | | |
| 2. If different from the child support guidelines award (line 27), enter amount ordered: \$ 0.00 | | | |
| 3. The child support guidelines were not used or the guidelines award was adjusted because: | | | |
| 4. The following court approved extraordinary expenses were added to the basic support obligation on Line 19: | | | |
| 5. Taxes | IX-H | CircE | Other |
| CP: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Other |
| NCP: | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> Other |
| | | | Allow's |
| | | | # Allowances :3 |
| | | | Marital Status |
| | | | <input type="checkbox"/> Single |
| | | | <input type="checkbox"/> Married |
| | | | <input checked="" type="checkbox"/> HoH |
| | | | <input type="checkbox"/> Single |
| | | | <input checked="" type="checkbox"/> Married |
| | | | <input type="checkbox"/> HoH |
| Prepared By: | Title: | Date: | |
| ALEXANDRA PRICE | JUDICIARY LAW CLERK | 02/04/2014 | |

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3656-13T4

PRASAD KUMMARAPURUGU,

Plaintiff-Appellant,

v.

PADMINI THOTA,

Defendant-Respondent.

Argued April 21, 2015 – Decided May 21, 2015

Before Judges Accurso and Manahan.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FM-11-213-06.

David Perry Davis argued the cause for appellant.

Padmini Thota, respondent, argued the cause pro se.

PER CURIAM

In this post-judgment matrimonial action, plaintiff Prasad Kummarapurugu appeals from the trial court's order of February 12, 2014, recalculating his child support obligation to \$272 per week. Plaintiff argues the trial court erred in its calculation of child support. We affirm.

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The parties were married in 1999 and divorced in 2006. They are the parents of one child and share custody. Both parties have remarried and had children with their current spouses. On July 8, 2013, plaintiff filed a motion seeking, among other relief, a review of his child support obligation as the result of his current wife giving birth to a child a year earlier.

The court conducted oral argument on August 8, 2013. Thereafter, the court entered a multi-purpose order, dated October 31, 2013, which granted in part the plaintiff's application. The recalculation of plaintiff's child support was dependent upon certain financial information to be provided by the parties. On February 12, 2014, after provision of the requested submissions but without further argument by the parties, the court issued an order modifying plaintiff's child support obligation to \$272 per week, effective the date of the order. In the determination of the child support amount, the court held:

After receiving the parties' submissions the Court ran a sole parenting worksheet based on the documentation provided. The Court averaged the plaintiff's bonuses and calculated his income at \$2,750 per week, or \$143,000 per year. The Court calculated defendant's income at \$1,549 per week or \$80,000 per year. The Court calculated plaintiff's overnights at fifty-two per year, included defendant's contribution for

medical insurance, and plaintiff's other dependent deduction. Based on all those factors, the plaintiff's child support obligation shall be modified to \$272 per week, effective February 12, 2014. The child support guideline is attached thereto and made apart hereof as schedule A.

On appeal, plaintiff contests the trial court's determination of his child support amount. His principal argument is that it is unfair to have his child support amount modified as the court failed to consider the appropriate child support guideline factors. In opposition, defendant argues the judge made sufficient fact findings to justify the child support award. We are satisfied from our review of the record that the judge's reasons and explanation sufficiently support the issuance of the order.¹

Our review of the judge's findings is a limited one. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, [we] should accord deference to family court fact-finding." Id. at 413. Accordingly, we will not "engage in an independent assessment of the evidence as if [we] were the court

¹ At oral argument, the parties referenced changed circumstances that occurred after the court's decision. We did not consider those arguments as they were outside the record. See, e.g., Toll Bros., Inc. v. Twp. W. Windsor, 173 N.J. 502, 558 (2002). We note that a support order is "always subject to review and modification on a showing of changed circumstances." Lepis v. Lepis, 83 N.J. 139, 146 (1980) (citations omitted).

of first instance,'" N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 433 (App. Div. 2002) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)), and will "not disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Cesare, supra, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Where our review addresses questions of law, a trial judge's conclusions "are not entitled to that same degree of deference if they are based upon a misunderstanding of the applicable legal principles." Z.P.R., supra, 351 N.J. Super. at 434 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

The trial court is afforded substantial discretion to determine child support awards and other support obligations. Foust v. Glaser, 340 N.J. Super. 312, 315 (App. Div. 2001) (relying on Pascale v. Pascale, 140 N.J. 583, 594 (1995)). A support order is "always subject to review and modification on a showing of changed circumstances." Lepis, supra, 83 N.J. at 146. "If consistent with the law, such an award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly

contrary to reason or to other evidence, or the result of whim or caprice." Foust, supra, 340 N.J. Super. at 315-16 (quotations omitted). "When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013). Applying these standards, we discern no reason to disturb the judge's decision.

By statute, parents are presumptively required to provide for the financial support of their unemancipated children. Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A(1) to R. 5:6A at 2625 (2015). The statute enumerates several factors to consider in calculating support, including (1) the "[n]eeds of the child"; (2) the "[s]tandard of living and economic circumstances of each parent"; (3) "[a]ll sources of income and assets of each parent"; (4) the "[e]arning ability of each parent"; (5) the "[n]eed and capacity of the child for education"; (6) the "[a]ge and health of [each] child and each parent"; (7) the "[i]ncome, assets and earning ability of the child"; (8) the "[r]esponsibility of the parents for the court-ordered support of others"; (9) the "[r]easonable debts and liabilities of each child and parent"; and (10) "[a]ny other factors the court may deem relevant." N.J.S.A. 2A:34-23(a).

The Supreme Court established presumptive Guidelines, and corresponding factors, to calculate child support. Pressler & Verniero, supra, Appendix IX-A to R. 5:6A at 2625-2647. "A court may deviate from the [G]uidelines only when good cause demonstrates that [their] application . . . would be inappropriate." Lozner v. Lozner, 388 N.J. Super. 471, 480 (App. Div. 2006) (citing Ribner v. Ribner, 290 N.J. Super. 66, 73 (App. Div. 1996)). "The key to both the Guidelines and the statutory factors is flexibility and the best interest of children." Pascale, supra, 140 N.J. at 594.

In Loro v. Colliano, 354 N.J. Super. 212 (App. Div. 2002), we considered a trial court's award of specific child support payments. The plaintiff argued, among other things, that the lack of findings by the trial judge was reversible error since the record lacked support for the quantum of support permitted. Id. at 220. We disagreed with the plaintiff, although we noted that the judge's findings were "not a paradigm of the findings required by R. 1:7-4." Ultimately, we concluded that the facts adduced from the record were sufficient to support the award. Ibid.

As in Loro, we are satisfied the judge made sufficient and particular findings related to the parties' incomes and child support obligation. The judge appropriately addressed the

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recalculation of child support through application of the statutory factors. Given our deferential standard of review, we find no error in the court's determination. We are satisfied from our review that the court's order was not "manifestly arbitrary, unreasonable or contrary to the evidence." Loro, supra, 354 N.J. Super. at 220.

Finally, plaintiff argues, assuming we were to agree with his child support calculation, the effective date of the child support order should be amended to the filing date of his motion to modify on July 8, 2013, due to the time it took the court to issue an order. We find no error in the decision regarding the effective date of the modification. N.J.S.A. 2A:17-56.23a prohibits retroactive child-support modifications. Although the statute contains an exception "with respect to the period during which there is a pending application for modification," we find no abuse of discretion by the court not availing itself of the exception.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

ORDER ON MOTION

PRASAD KUMMARAPURUGU
V.
PADMINI THOTA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003656-13T4
MOTION NO. M-007539-14
BEFORE PART F
JUDGE(S): ALLISON E. ACCURSO
THOMAS V. MANAHAN

MOTION FILED: 05/28/2015

BY: PRASAD KUMMARAPURUGU

ANSWER(S)
FILED:

SUBMITTED TO COURT: June 04, 2015

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
11th day of June, 2015, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RECONSIDERATION

DENIED

SUPPLEMENTAL:

FOR THE COURT:

Allison E. Accurso

ALLISON E. ACCURSO, J.A.D.

FM-11-000213-06
ORDER - REGULAR MOTION
RLC

MERCER

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