

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3205-00T3

CYNTHIA ANN GOLDBERG,
Plaintiff-Respondent,

v.

ALAN RICHARD GOLDBERG,
Defendant-Appellant.

FILING DATE
APPELLATE DIVISION

MAY 21 2002

Just sign
CLERK

Submitted May 8, 2002 - Decided

MAY 21 2002

Before Judges Fall and Bilder.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Mercer
County, FM-1128790-88.

David Perry Davis, attorney for appellant.

No brief was filed on behalf of respondent.

PER CURIAM

Defendant Alan Goldberg appeals from an order of the Family Part denying his November 29, 2000 motion for reconsideration of so much of an October 27, 2000 order as denied him credit for child support payments made with respect to his son Todd subsequent to Todd's emancipation on January 1, 1999. In that order the court recited that N.J.S.A. 2A:17-56.23a "specifically prohibits the retroactive modification of child support 'except for the period during which the party seeking relief has pending an application for modification'." Child support was accordingly

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modified effective August 14, 2000, the date defendant filed his motion for modification.

In an oral decision of January 29, 2001, the trial judge found that defendant had not provided any evidence of mistake, inadvertence, surprise or excusable neglect such as justified reconsideration of the earlier order.

Reconsideration should only be utilized when the court has based its decision upon a palpably incorrect or irrational basis, or it is obvious that the court either did not consider or failed to appreciate the significance of probative, competent evidence, or if a litigant wishes to bring new or additional information to the court's attention which it could not have provided on the first application. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392, 401-402 (Ch. Div. 1990).

Here we are satisfied that the October 27, 2000 decision was based upon an incorrect understanding of the existing state of the law. N.J.S.A. 2A:17-56.23a preclusion of retroactive termination of child support does not apply where the child is emancipated. Mahoney v. Pennell, 285 N.J. Super. 638, 643 (App. Div. 1995). It did not bar termination of Todd's child support retroactively to his January 1, 1999 emancipation.

Reversed and remanded for modification of the October 27, 2000 order to give defendant credit for overpayment of child support made since Todd Goldberg's January 1, 1999 emancipation.

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

Jim Flynn
CLERK OF THE APPELLATE DIVISION

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