STATE OF MICHIGAN

COURT OF APPEALS

SUSAN LYNN SCHNEIDER-PENNING f/k/a SUSAN LYNN ADAMS, Plaintiff-Appellee,	UNPUBLISHED July 30, 2013
v CRAIG STEPHEN ADAMS, Defendant-Appellant.	No. 307034 Ottawa Circuit Court LC No. 00-037518-DM

Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order modifying his child support obligation. For the reasons set forth below, we vacate the trial court's order and remand for further proceedings consistent with this opinion.

I. FACTS AND PROCEEDINGS

Plaintiff and defendant were married on November 27, 1982 and, during the marriage, they had four children. Plaintiff filed a complaint for divorce on July 17, 2000, and the court entered a judgment of divorce on July 27, 2001. The divorce judgment ordered defendant to pay child support for the minor children, and only one child had not reached the age of majority at the time this dispute arose.

During and after the marriage, defendant worked for R. L. Adams Plastics, Inc., a corporation founded by his father. Defendant's mother, Lilo Adams, is chairman of the board of the corporation, the majority shareholder, and defendant's immediate supervisor. Defendant is the corporation's chief executive officer and minority shareholder. Defendant testified that there are also two additional board members, defendant's sister and a former accountant for the corporation. On June 13, 2011, defendant filed a motion to modify his child support obligation, citing a significant decrease in his salary. Specifically, defendant stated that, on March 20, 2011, his weekly salary was reduced 55 percent, from $10,647.58 per week to $4,807.69 per week. In response, plaintiff noted that, as recently as November 2010, the trial court had calculated defendant's support obligation on an annual salary of $591,000 and that, as an owner of the business, defendant had full control over his income.

Referee Rick Parks conducted a hearing on defendant's motion on July 6, 2011. Defendant testified that, over the previous three years, he guaranteed loans for a failed development project, and Comerica Bank obtained a $19 million judgment against him. According to defendant, his mother was also a party to the Comerica Bank action, and was aware of the judgment. Defendant testified that, in essence, his business decisions "had a negative impact on the amount of the profitability of the company." He further explained that, after the Comerica Bank judgment was issued on March 14, 2011, his mother called him and conducted a performance review over the telephone. Ms. Adams told defendant that, on the basis of his poor job performance, his salary would be reduced as set forth above. Because of the amount of Comerica Bank's judgment, defendant testified that he filed for personal bankruptcy protection in May 2011.

Defendant urged the referee to base his support obligation on an annual income of $266,853.58. But plaintiff's counsel argued that the referee should base defendant's support obligation on defendant's salary as determined by the circuit court in November 2010. She noted that, during the support review hearing before Judge Jon Van Allsburg, defendant argued that his annual salary was $278,000, which is an amount similar to the salary he was claiming in the modification hearing. Nonetheless, Judge Van Allsburg concluded that defendant's annual salary was $591,000. Plaintiff's counsel noted that defendant's actual income included bonuses and that, in 2009 his total income was $889,909 and, in 2010 it was $855,552. Plaintiff's attorney further observed that the topic of defendant's investment in the failed development was considered by Judge Van Allsburg at the November hearing, so it did not justify a modification a few months later. She also observed that defendant did not present evidence of the actual financial impact his investment made on the corporation. Plaintiff's counsel stated that it is suspicious that defendant's mother reduced his salary immediately after the Comerica judgment and shortly before defendant filed for bankruptcy, surmising that the decision was made so that defendant could avoid creditors, avoid garnishment of his paychecks, and so that the bankruptcy court would base its determination of defendant's ability to pay his debts on his new, lower salary.

Referee Parks concluded that defendant's testimony was credible and that he established a substantial change of circumstances that warranted a lower monthly child support payment. Using the Michigan Child Support Formula (MCSF), the referee determined defendant's annual income to be $254,250. He characterized as merely speculative, plaintiff's argument that defendant controlled his own pay decrease and that defendant and his mother cut his pay as a tactic to avoid creditors. Pursuant to the MCSF Manual, Parks recommended a monthly child support payment of $1,995.00. The trial court signed the order on July 19, 2011.

On July 28, 2011, plaintiff filed an objection to the modification and requested a de novo hearing. Judge Van Allsburg conducted the hearing on September 22, 2011. Plaintiff's counsel noted that defendant's 2010 proposed tax return showed an income of $885,503. She again pointed out that the trial court had considered defendant's failed investment in November 2010, defendant's actions in that regard started in 2009, and it did not make sense for defendant's mother to reduce his salary for this reason in March 2011. Plaintiff's attorney again asserted that it is more likely that Ms. Adams reduced defendant's salary to avoid the Comerica Bank judgment and other creditors. She also noted that defendant continued to receive quarterly

bonuses in addition to his salary, $13,841 on April 28, 2011, and $13,841 on July 28, 2011, and that he might receive another substantial bonus at the end of the year.

Defendant testified that he had no control over his income and the sole reason his mother gave for reducing his salary was his bad investment and the resulting Comerica Bank judgment that was entered the same month. He admitted that he received the two quarterly profit sharing bonuses, but testified that the corporate board decided that it would not issue any more bonuses that year.

In a written opinion, the trial court ruled that, while defendant's testimony was credible with regard to the reason for his salary reduction, the evidence did not show that the company actually sustained a financial loss because of defendant's conduct. The trial court observed, "Given that the significant reduction in [defendant's] income is the result of an investment failure not directly related to the business paying his income, it seems that his income could just as easily be restored if in fact there is no significant impact on the fortunes of the company paying his salary." The court opined that defendant's situation is comparable to a parent whose salary varies considerably from year-to-year due to the nature of his or her business and that, therefore, it would use a three-year income average as contemplated by 2008 MCSF 2.02(B). The court calculated defendant's average annual income to be $478,750, and ruled that defendant's monthly child support should be $3,148. Thereafter, the trial court denied defendant's motion for reconsideration.

II. DISCUSSION

Defendant argues that the trial court should not have conducted a de novo hearing on the child support modification and that the court incorrectly applied a three-year average to determine defendant's annual income for purposes of calculating his child support.

As this Court explained in *Clarke v Clarke*, 297 Mich App 172, 178-179; 823 NW2d 318 (2012):

> Generally, child support orders, including orders modifying child support, are reviewed for an abuse of discretion. *Malone v Malone*, 279 Mich App 280, 284; 761 NW2d 102 (2008). However, whether the trial court properly applied the MCSF presents a question of law that we review de novo. *Stallworth v Stallworth*, 275 Mich App 282, 284; 738 NW2d 264 (2007). On the other hand, factual findings underlying the trial court's decisions are reviewed for clear error. *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007).

Defendant maintains that, contrary to MCR 3.215(E)(4), plaintiff's objection to the referee's findings and the subsequent order did not include a statement of the specific findings or application of law on which her objection was made. MCR 3.215(E)(4) provides:

> A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel. *The objection*

> *must include a clear and concise statement of the specific findings or application of law to which an objection is made.* Objections regarding the accuracy or completeness of the recommendation must state with specificity the inaccuracy or omission. [Emphasis added.]

Plaintiff's objection to the first modification order stated, in its entirety, as follows:

> NOW COMES the Plaintiff, through her attorneys, Scholten Fant, and files her objection to the Referee Findings and Order After Hearing on Modification of Support.
>
> Plaintiff would request that this matter be set for a De Novo hearing.

We agree that plaintiff's objection to the referee's findings and order did not "include a clear and concise statement of the specific findings or application of law to which an objection is made." When defendant raised this issue during the de novo hearing, the court acknowledged that plaintiff's objection was inadequate, but decided to conduct the hearing "on the basis of judicial economy," because both parties were present and because the basis for plaintiff's objection was not a surprise to anyone. Even allowing defendant some lenience because he was representing himself, we note that he did not ask the court to dismiss the hearing or ignore plaintiff's objection on this ground and, instead, merely noted the deficiency for the record. He now argues that the court should have declined to conduct the hearing.

We agree that the court rule states that the "objection *must*" contain specific grounds on which the objection is made, and that the word "must" indicates that specificity is mandatory. *Allard v State Farm Ins Co*, 271 Mich App 394, 398; 722 NW2d 268 (2006). However, we do not agree with defendant that the sanction for plaintiff's failure to do so had to be dismissal. As the trial court observed, MCR 1.105 states that the court "rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." The record also reflects that neither party was surprised by the basis for plaintiff's objection. As the trial court pointed out, the only matter at issue was the income averaging, and, accordingly, there was no confusion about the subject and nature of plaintiff's objection. Further, plaintiff took the same position at the de novo hearing as she did before the referee—that defendant's child support obligation should not be reduced because he had control over his salary and the reduction was the result of collusion between defendant and his mother. Defendant's substantial rights were not affected by the lack of specificity in plaintiff's objection, and we decline to vacate the trial court's decision on this ground.

Defendant also argues that the trial court erred by relying on a three-year average to determine his annual income. Application of the child support formula is mandatory when setting child support levels. *Burba v Burba (After Remand)*, 461 Mich 637, 643; 610 NW2d 873 (2000), citing MCL 552.16(2), the language of which is now found in MCL 552.605(2). "This Court must ensure compliance with the plain language of the MCSF Manual." *Peterson v Peterson*, 272 Mich App 511, 518; 727 NW2d 393 (2006). The instructions to calculate income appear in Chapter 2 of the MCSF Manual. Subsection 2.02 of the manual, entitled "Seasonal and Annual Variation," states: "Where income varies considerably year-to-year due to the nature of

the parent's work, use three years' information to determine that parent's income." 2008 MCSF 2.02(B).

At the review hearing, plaintiff asked the trial court to primarily rely on the record created during the hearing before the referee. We agree with defendant that evidence did not show that his income varied considerably year-to-year, or that any variance was due to the nature of his work. Indeed, plaintiff's counsel conceded that, since 1999 or 2000, "there hasn't been a significant difference in Mr. Adams' base salary over many, many years." The trial court agreed with that fact, and also agreed with the referee's findings that defendant testified truthfully about the reason for the salary reduction. Nonetheless, the trial court averaged defendant's salary over three years to determine his monthly support obligation.

While some evidence suggested that the amount or frequency of defendant's bonuses might vary, the focus of the hearing was not on defendant's bonuses, but on the change to his base salary. And, contrary to the trial court's assertion, simply because defendant's mother is the chairman of the board of R. L. Adams Plastics does not mean that any variation in defendant's salary is based on the "nature of [defendant's] work." Rather, again, defendant's salary as CEO of the company has been stable for many years and, while plaintiff attempted to *argue* otherwise, the only *evidence* presented showed that the income reduction in 2011 was based on defendant's poor job performance. Accordingly, we hold that the trial court erred as a matter of law in applying 2008 MCSF 2.02(B). *Stallworth*, 275 Mich App at 284. Defendant's income does not fall within the category of income that "varies considerably year-to-year due to the nature of the parent's work." It was an improper application of the MCSF Manual to use a three-year average to determine defendant's annual income and, therefore, we vacate the trial court's child support order.

We further note that, though the trial judge stated that defendant received two bonuses in 2011, the judge observed that the amounts of the bonuses were not in the record. At the hearing, plaintiff's counsel asserted that defendant received two bonuses of $13,841 each, and defendant acknowledged receipt of the bonus checks. It appears that the parties agree that defendant received at least that much in addition to his base salary and that he was under a continuing obligation to report extra income. Accordingly, on remand, the trial court should recalculate defendant's annual income for child support purposes on the basis of defendant's reduced salary, his bonuses, and other record evidence.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Deborah A. Servitto