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DANIEL HUGHES *v.* PAMELA HUGHES
(AC 25767)

Bishop, Harper and Mihalakos, Js.

Argued November 14, 2005—officially released May 2, 2006

(Appeal from Superior Court, judicial district of Stamford-Norwalk, Hon. Dennis F. Harrigan, judge trial referee.)

Gaetano Ferro, with whom were *Brigid A. Connolly* and, on the brief, *Livia D. Barndollar*, for the appellant (plaintiff).

Gary I. Cohen, for the appellee (defendant).

Opinion

BISHOP, J. The plaintiff, Daniel Hughes, appeals from the judgment of the trial court dissolving his marriage to the defendant, Pamela Hughes. On appeal, the plaintiff claims that the court improperly (1) relied on his gross income rather than his net income in fashioning the unallocated child support and alimony order, (2) ordered postmajority child support in violation of General Statutes § 46b-84, (3) awarded lifetime alimony, (4) awarded the defendant 50 percent of the plaintiff's stock options and restricted stock, and (5) considered the plaintiff's bonus that was paid in early 2004 as both a source of income and as an asset. The plaintiff also claims that the totality of the court's orders constituted an abuse of discretion. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of the plaintiff's appeal. The parties were married on September 10, 1994. They are the parents of three children, all minors. Claiming an irretievable breakdown in the marital relationship, the plaintiff brought this dissolution action by a complaint dated August 9, 2001. He sought dissolution of the marriage, joint custody of the minor children and a division of the marital assets. The defendant admitted the allegations in the plaintiff's complaint and filed a cross complaint in which she sought dissolution of the marriage, sole custody of the minor children, child support, alimony and a division of the marital assets.

By memorandum of decision filed June 18, 2004, the court dissolved the parties' marriage and issued financial orders.[1] The plaintiff timely filed a motion to reargue, which was denied on July 28, 2004. This appeal followed.

As a preliminary matter, we set forth our standard of review. "An appellate court will not disturb a trial court's orders [financial or otherwise] in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . We apply that standard of review because it reflects the sound policy that the trial court has the unique opportunity to view the parties and their testimony, and is therefore in the best position to assess all of the circumstances surrounding a dissolution action, including such factors as the demeanor and the attitude of the parties." (Citation omitted; internal quotation marks omitted.) *Dombrowski* v. *Noyes-Dombrowski*, 273 Conn. 127, 132, 869 A.2d 164 (2005). Mindful of these principles, we turn to the issues at hand.

I

The plaintiff's first three claims relate to the court's order of unallocated alimony and child support. The court ordered, inter alia: ''The plaintiff shall pay unallocated periodic alimony and child support of 40 percent of the first $400,000 of his cash earnings in each year, 30 percent of the next $300,000 of cash earnings and 10 percent of the next $150,000 of cash earnings. Such earnings shall not include other forms of compensation such as stock options, restricted stock, [deferred profit sharing and employee stock ownership plans], capital accumulation plan or any other incentive awards. Payments shall be made monthly utilizing his base salary and the most recent cash bonuses paid for the prior year. Payments shall be made until the death of either party, the defendant's remarriage or her cohabitation as defined by [General Statutes § 46b-86 (b)] and case law. This order is modifiable as to amount and is indefinite as to term subject to the limitations aforesaid. A wage withholding is entered.'' We address the plaintiff's three claims regarding this order in turn.

A

The plaintiff first claims that the court improperly relied on his gross income rather than on his net income in fashioning the unallocated alimony and child support order. Specifically, the plaintiff claims that because the court referred only to gross income and did not mention net income in its memorandum of decision, its order was based solely on gross income and was therefore improper. We disagree.

The parties acknowledge that the principle of law governing this issue is clear. It is well settled that a court must base its child support and alimony orders on the available net income of the parties, not gross income. *Collette* v. *Collette*, 177 Conn. 465, 469, 418 A.2d 891 (1979). Whether or not an order falls within this prescription must be analyzed on a case-by-case basis. Thus, while our decisional law in this regard consistently affirms the basic tenet that support and alimony orders must be based on net income, the proper application of this principle is context specific.

In *Morris* v. *Morris*, 262 Conn. 299, 811 A.2d 1283 (2003), our Supreme Court reversed the judgment of the trial court because, in that instance, the court *expressly* relied on the parties' gross incomes in modifying the defendant's child support obligation. The *Morris* court concluded: ''Although the court broadly stated that its support order was based on financial affidavits, the court, nonetheless, expressly and affirmatively stated that the defendant has the following *gross* amounts which are properly included in his support income consideration . . . .'' (Emphasis added; internal quotation marks omitted.) Id., 307.

In *Ludgin* v. *McGowan*, 64 Conn. App. 355, 358–59, 780 A.2d 198 (2001), this court reversed the judgment

of the trial court because the court based its financial orders on the parties' gross incomes. There, we stated: ''[T]he court repeatedly referred to and compared the parties' gross incomes. . . . Although the court had before it evidence of the parties' net incomes, it appears that the court chose not to rely on such information. The court's memorandum of decision is devoid of any mention of the parties' net incomes.'' (Internal quotation marks omitted.) Id.

In *Greco* v. *Greco*, 82 Conn. App. 768, 773, 847 A.2d 1017 (2004), aff'd, 275 Conn. 348, 880 A.2d 872 (2005), this court reversed the trial court's alimony order, which was based on gross income, even though the trial court did not affirmatively and expressly state that it had relied on the parties' gross incomes. In *Greco*, however, it was clear that the court relied solely on gross income because the financial orders far exceeded the obligor's available net income. Thus, the orders logically could only have been based on gross income.

In *Kelman* v. *Kelman*, 86 Conn. App. 120, 123, 860 A.2d 292 (2004), cert. denied, 273 Conn. 911, 870 A.2d 1079 (2005), although the trial court made reference to the parties' gross incomes in its decision, it did not expressly state that it was relying solely on gross earnings in framing its order. In affirming the trial court's decision, this court stated: ''[T]he court specifically stated that it took into account the relevant statutes, the parties' testimony, the financial affidavits and the child support guideline worksheets, which included the parties' net incomes.'' Id., 123–24.

Although the records in *Morris*, *Ludgin* and *Greco* supported the conclusions in those cases that the trial court's financial orders were based solely on the parties' gross incomes and not their net incomes, the record in this case does not compel such a conclusion. The case at hand is more analogous to *Kelman*. Although, in *Kelman*, the court's memorandum of decision referenced the parties' gross incomes, it did not state that it was relying *solely* on their gross incomes in fashioning its orders. Id., 123. As in *Kelman*, the mere notation by the court of a party's gross earnings is not fatal to its support and alimony orders so long as its orders are not based on the parties' gross earnings.

In this case, the court noted the plaintiff's gross earnings to demonstrate their scope and variability in order to explain its reasoning for fashioning an order framed as a percentage of the plaintiff's gross earnings. The court stated: ''The court lists the gross earnings of the plaintiff to illustrate the capability and ability he has displayed and the pay he has received for his efforts. Since his earned income fluctuates from year to year, the court will provide for a formula for the periodic alimony and child support. Each party has submitted a proposal in this respect in their proposed orders.'' Indeed, the plaintiff's proposed orders, filed on April 21,

2004, suggest an unallocated alimony and child support order on the basis of his gross annual cash compensation from employment.[2] The court further noted the gross and net values of the plaintiff's most recent cash bonus. Throughout its decision, the court made frequent reference to the parties' financial affidavits. The court also considered the tax returns, which disclosed not only the plaintiff's gross income, but also his total tax liability and, thus, his net disposable income. The court had before it ample evidence from which it could determine the plaintiff's net income and the respective financial needs and abilities of each party.

It is noteworthy, too, that the court also expressly considered the parties' proposed orders in which both parties proposed that the alimony and child support order should be unallocated and should be a function of the plaintiff's gross income. Although the court listed the plaintiff's gross earnings, taken from his tax returns for the years 1997 through 2003, unlike in *Morris*, the court here did not state that it *relied* on the plaintiff's gross earnings to form the basis of the order. Rather the court merely referred to the plaintiff's gross income to demonstrate his ability to pay support. Finally, the fact that the alimony and support order was ultimately a function of gross income does not, alone, stand for the proposition that the order was based on gross income. Here, we differentiate between an order that is a function of gross income and one that is based on gross income. In this regard, we note that we have found no case in which an order for support or alimony has been reversed on review simply because it was expressed as a function of a party's gross income. We believe that the term ''based'' as used in this context connotes an order that only takes into consideration the parties' gross income and not the parties' net income. Consequently, an order that takes cognizance of the parties' disposable incomes may be proper even if it is expressed as a function of the parties' gross earnings.

We note that, unlike in *Kelman*, the court in this case did not specifically reference the criteria used in making its decision. Our Supreme Court has repeatedly held, however, that the trial court is not required to make specific reference to the criteria that it considered in making its decision. See, e.g., *Dombrowski* v. *Noyes-Dombrowski*, supra, 273 Conn. 137. Although we recognize that an order need not affirmatively or expressly state that the court is relying solely on gross income for that order to be improper, we are similarly of the opinion that a trial court need not expressly state that it has considered the appropriate factors in reaching its decision. According the court every reasonable presumption in favor of the correctness of its decision, we assume that the court considered the appropriate statutory and evidentiary underpinnings in fashioning its financial orders. See *Febbroriello* v. *Febbroriello*, 21 Conn. App. 200, 203, 572 A.2d 1032 (1990). Although

the court did not expressly state that it considered the plaintiff's net income in determining the financial orders, we infer that the court considered the relevant statutory factors and all of the evidence submitted by the parties. Therefore, we cannot conclude that the court abused its discretion in fashioning the support order.

B

The plaintiff next claims that the support order, by its terms, provides for child support beyond the age of majority and is thus beyond the jurisdiction of the court. Specifically, the plaintiff claims that the order must contain a step-down to coincide with each child reaching the age of majority. We disagree.

As a general matter, "[t]he obligation of a parent to support a child terminates when the child attains the age of majority, which, in this state, is eighteen. General Statutes § 1-1d; *Kennedy* v. *Kennedy*, 177 Conn. 47, 52, 411 A.2d 25 (1979).[3] The statutory grant of jurisdiction to the Superior Court in matters relating to child support incident to the dissolution of a marriage[4] likewise expressly circumscribes the court's jurisdiction to orders involving only 'minor children.' " *Cariseo* v. *Cariseo*, 190 Conn. 141, 142–43, 459 A.2d 523 (1983).

The plaintiff claims that because the order provides for no reduction as each child reaches the age of majority, a portion of the support order will necessarily be attributable to the support of a child who has surpassed the age of majority. The plaintiff fails to acknowledge, however, the fact that he may move to modify the combined alimony and support order at any time, including the date on which each child reaches the age of majority.[5] This court has held that "[w]hen, as part of a divorce decree, a parent is ordered to pay a specified amount periodically for the benefit of more than one child, the emancipation of one child does not automatically affect the liability of the parent for the full amount. . . . The proper remedy . . . is to seek a modification of the decree." (Citation omitted; internal quotation marks omitted.) *Gillespie* v. *Gillespie*, 8 Conn. App. 382, 386, 512 A.2d 238 (1986). Thus, although the attainment of majority by each child may not automatically entitle the plaintiff to a reduction in his alimony and support obligation, it provides a basis for the plaintiff to seek a modification. Because the order as framed by the court does not, by its own terms, require a payment of combined alimony and support beyond the dates on which the children reach the age of majority, and because the order is subject to modification as each child reaches the age of majority, it is does not violate the proscription against orders for the payment of support beyond the permissible age.

Accordingly, we hold that the court's alimony and support order, which can be modified at any time by

the court, does not, by its terms, require the plaintiff to pay postmajority child support. Therefore, it does not constitute an abuse of discretion by the court.

C

The plaintiff also claims that the court improperly awarded lifetime alimony. Specifically, the plaintiff claims that because the parties were married for less than ten years and they were both thirty-eight years old and in good health at the time of dissolution, the court abused its discretion in awarding alimony of indefinite duration. The record belies the plaintiff's claim.

General Statutes § 46b-82 (a) provides in relevant part: ''In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall hear the witnesses, if any, of each party, except as provided in subsection (a) of section 46b-51, shall consider the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81 . . . .''

''General Statutes § 46b-82 describes circumstances under which a court may award alimony. The court is to consider these factors in making an award of alimony, but it need not give each factor equal weight. . . . As long as the trial court considers all of these statutory criteria, it may exercise broad discretion in awarding alimony.'' (Internal quotation marks omitted.) *Chyung* v. *Chyung*, 86 Conn. App. 665, 669–70, 862 A.2d 374 (2004), cert. denied, 273 Conn. 904, 868 A.2d 744 (2005).

In this case, the court found that the plaintiff's behavior, specifically his extramarital relationship, was the primary cause for the breakdown of the marriage. The court found that although both parties were in good health, the defendant has had no career other than as a homemaker, and that the plaintiff's occupation, vocational skills and employability afforded him greater prospects for income than were available to the defendant. The court also undertook a thorough examination of the assets of the parties. It is clear that the court was mindful of its obligation to consider the statutory factors in determining alimony. Given the court's finding, which was amply supported by the record, that the defendant had not been employed outside the home, had no prospects for employment and had no skills for employability, and the court's apparent consideration of the statutory factors, we cannot conclude that the court abused its discretion in issuing an alimony order of unlimited duration.

II

The plaintiff next claims that the court improperly awarded the defendant 50 percent of all of the plaintiff's

stock options and restricted stock units.[6] Specifically, the plaintiff claims that the court should have distinguished between those awards he received for services performed during the marriage, those he received for employment services after the parties' separation and those he received in contemplation of future services. In making this claim, the plaintiff acknowledges, as he must, that the court has a broad latitude of discretion in formulating its orders regarding the distribution of assets, including those that relate to employment. See *Bornemann* v. *Bornemann*, 245 Conn. 508, 752 A.2d 978 (1998). To the extent that the plaintiff claims that the court did not fully explain its rationale for its orders, it is not the function of this court on review to engage in speculation. We note that neither party sought an articulation from the court regarding this portion of its orders. ''Conclusions of the trial court cannot be reviewed where the appellant fails to establish through an adequate record that the trial court incorrectly applied the law or could not reasonably have concluded as it did . . . .'' (Internal quotation marks omitted.) *Calo-Turner* v. *Turner*, 83 Conn. App. 53, 56, 847 A.2d 1085 (2004). Because the orders, as issued, are within the court's discretion, this claim fails.

III

The plaintiff next claims that the court improperly considered his bonus that was paid in early 2004 both as a source of income and as an asset to be distributed. This claim lacks merit.

As noted, the court ordered child support and alimony to be based on the plaintiff's cash earnings, including his cash bonuses. The court further ordered: ''The plaintiff is awarded and shall retain his Chase Bank account listed as containing $326,979 . . . .'' In January, 2004, the plaintiff received a bonus for his prior year's employment in the amount of $766,250 gross, and $456,992.78 net, which he claims he deposited into his Chase Bank account. The plaintiff claims that the court improperly based the support order on the bonus and awarded the bonus to the plaintiff as part of the division of assets. Merely because the plaintiff claims to have deposited the bonus into an account awarded to him as part of the property distribution does not indicate that the court considered the bonus as both a source of income and an asset to be distributed.[7]

IV

The plaintiff finally claims that the totality of the court's financial orders constituted an abuse of discretion. We disagree.

''A fundamental principle in dissolution actions is that a trial court may exercise broad discretion in awarding alimony and dividing property as long as it considers all relevant statutory criteria. . . . In reviewing the trial court's decision under [an abuse of discretion]

standard, we are cognizant that [t]he issues involving financial orders are entirely interwoven. The rendering of judgment in a complicated dissolution case is a carefully crafted mosaic, each element of which may be dependent on the other.'' (Internal quotation marks omitted.) *Chyung* v. *Chyung*, supra, 86 Conn. App. 668.

The judgment is affirmed.

In this opinion HARPER, J., concurred.

[1] To their credit, the parties stipulated to a parenting plan that was adopted by the court and incorporated into the decree of dissolution. The parties stipulated that they would share joint legal custody of the minor children, who would reside primarily with the defendant.

[2] The plaintiff's proposed orders provide, inter alia: ''The Husband shall pay unallocated alimony and child support of 30 [percent] of his gross annual cash compensation from employment up to $1,000,000.00. The Husband's payment for unallocated alimony and child support shall be based in each year upon his gross earned cash compensation received for his prior year's performance, i.e., for calendar year 2004, he shall pay 30 percent of his base salary of $150,000. . . . 'Gross annual cash compensation from employment' shall only include base salary and cash bonuses received in any calendar year, but shall not include all forms of noncash compensation, such as stock options, restricted stock, [deferred profit sharing and employee stock ownership plans], Capital Accumulation Plan and other such incentive awards.''

The defendant's proposed orders also suggest an unallocated support order based on the plaintiff's cash earnings. The stipulated pendente lite order for unallocated alimony and child support was also based on the plaintiff's base salary plus his cash bonus.

[3] Additional statutory provisions may apply, however, to modify this general rule. Pursuant to General Statutes § 46b-66 (a), a court in a dissolution proceeding may enter an order providing for postmajority child support when the parties have agreed in writing to the terms of that order. General Statutes § 46b-84 allows for postmajority support for children who are still in high school, and General Statutes § 46b-56c authorizes the court, at the time of the marital dissolution, to frame postmajority education orders.

[4] See General Statutes § 46b-84.

[5] ''General Statutes § 46b-86 governs the modification or termination of an alimony or support order after the date of a dissolution judgment. . . . A final order for [alimony or] child support may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. . . . The party seeking modification bears the burden of showing the existence of a substantial change in the circumstances.'' (Internal quotation marks omitted.) *Arena* v. *Arena*, 92 Conn. App. 463, 467, 885 A.2d 765 (2005).

[6] The court ordered, inter alia: ''[T]he defendant is awarded 50 percent of the Merrill Lynch stock options, the Morgan Stanley stock options and the Morgan Stanley stock units, and is made the equitable owner of the same.''

[7] The plaintiff testified that he opened the Chase Bank account in September, 2001. After opening the account, he had one half of his paycheck deposited directly into the account. There is no evidence of the amount in the account prior to the deposit of the bonus.