DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JAMES W. FUNDERBURK,

Appellant,

v.

MARCI L. RICENBAW f/k/a MARCI L. FUNDERBURK,

Appellee.

No. 2D21-2421

January 6, 2023

Appeal from the Circuit Court for Hillsborough County; Denise A. Pomponio, Judge.

Matthew E. Thatcher of The Solomon Law Group, P.A., Tampa, for Appellant.

Mark F. Baseman of Felix, Felix & Baseman, Tampa, for Appellee.

MORRIS, Chief Judge.

James W. Funderburk (the father) appeals the trial court's order granting in part and denying in part Marci L. Ricenbaw's (the mother) exceptions to the report and recommendation of the general magistrate in the underlying dissolution action. In its report and recommendation,

the general magistrate recommended granting the father's petition for modification of the timesharing schedule with the parties' three minor children and granting the father's petition to modify child support. The trial court granted the mother's exceptions to the general magistrate's report and recommendation concerning child support because it concluded that it did not have inherent or statutory authority to modify the father's child support obligations.[1] We reverse the part of the trial court's order granting the mother's exceptions as to child support because we conclude that the trial court did have such authority and because the general magistrate's factual findings were supported by competent substantial evidence. We affirm the trial court's order in all other respects.

The parties were married on May 26, 1997. They had three minor children during the marriage, born in 2009, 2011, and 2012. On March 20, 2013, the trial court entered a final judgment of dissolution of marriage, which incorporated the parties' marital settlement agreement (MSA). In the MSA, the parties agreed that the father "shall pay to [the mother], the sum of $6,000 per month . . . . The child support for the children shall never fall below the sum of $2,000 per month per child, or the Florida Statutory guidelines amount, whichever is more."

The father filed an amended supplemental petition for modification of the final judgment of dissolution on June 9, 2017, seeking modification of the timesharing and child support provisions of the final judgment and incorporated MSA. In his amended petition, he alleged that his income had substantially decreased and the mother's income

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[1] In its order, the trial court adopted the general magistrate's recommendation regarding timesharing, and the father has not challenged this ruling on appeal.

had substantially increased since entry of the final judgment. He alleged that the change in the parties' financial situations was an unanticipated and substantial change in circumstances and that modification was in the best interests of the children.

The father's amended petition was referred to a general magistrate. After a hearing, the general magistrate recommended granting the former husband's amended petition. Regarding child support, the general magistrate concluded that the court has the inherent authority to modify child support awards even where—as here—the parties' MSA imposes an "absolute floor" on the amount of child support one party must pay. The general magistrate found that the child support provision of the MSA created a windfall for the mother because she had no income at the time of the final judgment, but her income had increased substantially since entry of the final judgment. Further, the general magistrate found that the father had substantial income at the time of the final judgment, but that his income had substantially decreased through no fault of his own since entry of the final judgment. Therefore, the general magistrate recommended granting the father's petition for modification of the child support award.

The mother filed exceptions to the general magistrate's report and recommendation. The trial court denied the mother's exceptions regarding the timesharing issue and ratified that portion of the general magistrate's report and recommendation. The trial court recognized the father's concerns about the inequity caused by the contractual provision imposing an absolute floor on child support. However, the trial court granted the mother's exceptions to the general magistrate's recommendations regarding the child support issue. The father timely appealed.

"The standard of review governing a trial court's decision to deny modification of child support is abuse of discretion." *Kozell v. Kozell*, 142 So. 3d 891, 893 (Fla. 4th DCA 2014) (citing *Escobar v. Escobar*, 76 So. 3d 958, 960 (Fla. 4th DCA 2011)). "A trial court's decision to accept or reject a magistrate's conclusions is also reviewed for an abuse of discretion." *Id.* (citing *Perrone v. Frank*, 80 So. 3d 402, 404 (Fla. 4th DCA 2012)). Whether a child support obligation is modifiable under a MSA is an issue of law and is reviewed de novo. *deLabry v. Sales*, 134 So. 3d 1110, 1115 (Fla. 4th DCA 2014).

In relevant part, section 61.13(1)(a)2, Florida Statutes (2020), provides that the trial court "has continuing jurisdiction . . . to modify the amount . . . of the child support payments" under certain circumstances, including if modification is in the best interests of the child and "there is a substantial change in the circumstances of the parties."

In relevant part, section 61.14(1)(a) provides

> When the parties enter into an agreement for payments for . . . support, . . . whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, . . . and the circumstances or the financial ability of either party changes . . . either party may apply to the circuit court of the circuit in which . . . the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support . . . and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties, . . . decreasing, increasing, or confirming the amount of separate support . . . provided for in the agreement or order.

This court has recognized that "an agreement [regarding child support] would not be effective to oust an equity court of either its

inherent powers or its expressly granted statutory powers to control, protect and provide for infants" and "[a]ny substantial change in the father's ability to provide or the child's need for support would justify a modification of the support provisions, notwithstanding the provisions of the [MSA] or the fact that the final decree which established child support approved the agreement." *Dep't of Health & Rehab. Servs. ex rel. Walker v. Walker*, 411 So. 2d 347, 350 (Fla. 2d DCA 1982) (quoting *Eaton v. Eaton*, 238 So. 2d 166, 168 (Fla. 4th DCA 1970)); *see also* § 61.14(1)(a)2; *deLabry*, 134 So. 3d at 1116 (alteration in original) ("[A contract cannot] divest the courts of their authority to modify child support, for inherent in a court's authority is the authority to modify child support—regardless of any agreement between the parties." (quoting *Guadine v. Guadine*, 474 So. 2d 1245, 1245 (Fla. 4th DCA 1985))). Therefore, the trial court erred by concluding that it lacked the authority to modify the father's child support obligation despite the language in the parties' MSA setting the minimum amount of child support.

"A magistrate's findings are subject to being set aside by the trial court when they are clearly erroneous or the magistrate misconceived the legal effect of the evidence." *Kozell*, 142 So. 3d at 893 (quoting *McNamara v. McNamara*, 988 So. 2d 1255, 1258 (Fla. 5th DCA 2008)). "A party moving for modification of child support has the burden of proving the following factors: (1) a substantial change in circumstances; (2) the change was not contemplated at the time of the final judgment of dissolution; and (3) the change is sufficient, material, involuntary, and permanent in nature." *Id.* at 894 (citing *Maher v. Maher*, 96 So. 3d 1022, 1022 (Fla. 4th DCA 2012)).

The general magistrate made the following findings: the father's timesharing would increase as a result of the general magistrate's report and recommendation; the father's income had decreased from approximately $450,000 a year in 2015 to approximately $197,000 a year in 2019 through no fault of his own; the mother's income had unexpectedly increased from nothing[2] at the time of the entry of the final judgment to more than $150,000 per year in salary plus rental income of more than $45,000 per year; the father has no savings or retirement accounts; the father has significant debt from the divorce proceedings, credit cards, and tax liabilities; and the mother was able to afford luxuries such as cruises and expensive jewelry. Each of these findings of fact—except that the mother's income was "nothing" at the time of the entry of the final judgment—were supported by evidence and testimony presented at the hearing on the father's amended petition. Although the general magistrate's finding that the mother had no income at the time of the entry of the final judgment was contradicted by evidence in the record, the general magistrate was correct that the mother's income at the time of the entry of the final judgment was significantly less than the father's and that she was an unemployed homemaker.

Based on these findings of fact, the general magistrate concluded that the father had established an unanticipated, involuntary, and substantial change of circumstances that justified downward modification of the father's child support obligation to the amount provided by the statutory guidelines. The general magistrate also

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[2] The record indicates that the mother's income at the time of entry of the final judgment of dissolution was approximately $41,000. The mother testified that while she was an unemployed stay-at-home mother at the time, the income was rental income from her farm property in Nebraska.

concluded that downward modification of the child support obligation would be in the best interests of the children because the father would be exercising more timesharing with the children.

The general magistrate's findings are supported by competent substantial evidence; therefore, the trial court should have accepted them. *See Coriat v. Coriat*, 306 So. 3d 356, 358 (Fla. 2d DCA 2020) ("When the trial court reviews the magistrate's report to resolve an exception, . . . a trial court must accept the magistrate's findings of fact if they are supported by competent, substantial evidence." (quoting *In re Drummond*, 69 So. 3d 1054, 1054 (Fla. 2d DCA 2011))). Further, the general magistrate properly concluded that the child support obligation in the final judgment was modifiable; therefore, the general magistrate's recommended modification of the child support obligation was proper. *See Kozell*, 142 So. 3d at 893 (explaining that the trial court should not set aside the general magistrate's recommendation unless the general magistrate's findings are clearly erroneous (citing *McNamara*, 988 So. 2d at 1258)); *cf. deLabry*, 134 So. 3d at 1116; *Guadine*, 474 So. 2d at 1245; *Walker*, 411 So. 2d at 350.

The trial court erred by granting the mother's exceptions to the general magistrate's report and recommendation regarding child support. We affirm the trial court's order in part, reverse in part as to the trial court's ruling on the mother's exceptions, and remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

NORTHCUTT and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.