IN THE TRIAL COURT OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

Lynne R. Cannon,

Petitioner,

v.

Leonard Prescott,

Respondent.

Case No. 486-02

MEMORANDUM OPINION AND ORDER

As with a similar case filed in this Court and heard at the same time, see Wright v. Prescott, No. 487-02 (SMS(D)C Tr. Ct.), the procedural posture of this case is sufficiently complicated to warrant some explanation. Petitioner in this case filed an action in the Minnesota state courts seeking child support from the Respondent. On July 17, 1995, the Minnesota state court issued an order concluding that Respondent was the father of the child in question and ordered the Respondent to do the following:

> (1) to pay $1,330.00 a month in child support,
> (2) to maintain health insurance through the Community, and that the Respondent would pay 75% of any uninsured medical and health expenses, while the Petitioner would pay 25% of such costs, and
> (3) to pay child care expenses.

On February 19, 2002, the Petitioner moved this Court for permission to enforce the July 17, 1995 Minnesota state court order in this Court. Respondent did not object, and the Trial Court issued an order granting full faith and credit to the July 17, 1995 order.

On June 12, 2002, Petitioner filed a motion in this Court requesting that the child's support award be increased. She has also asked that (1) the Respondent establish an automatic deposit system for his child support payments, (2) that Respondent pay any out of pocket, uninsured therapy or medical expenses related to the child's special education needs, (3) that the child be awarded income and interest stemming from Respondent's failure to timely enroll the child as a member of the Community, and (4) that she be awarded attorney's fees for this motion. Lastly, Petitioner has submitted a supplemental affidavit seeking to have the Respondent pay for the child's naming ceremony. Petitioner supported these requests with affidavits and exhibits.

LEGAL DISCUSSION

After the Trial Court granted full faith and credit to state court's July 17, 1995 order, the child support award in this case states that Respondent is to pay Petitioner $1,330.00 a month. The Petitioner would like that amount increased.

The Domestic Relations Code was amended in 2001 to make clear how child support awards are to be calculated and how a request for an increase in child support is to be handled. Specifically, the resolution accompanying those amendments states that

> Members of the Community have not been afforded the full protection of the law of the Community due to misinterpretations or misunderstandings of the [child support] guidelines in the Domestic Relations Code . . . [and] the General Council determines it is necessary to clarify its intent and purpose in promulgating the Domestic Relations Code and to clearly specify the limits on the exercise of discretion by the Tribal Court in determining awards of child support . . .

Chapter III, Section 7(a) provides a set of guidelines for child support awards. When read together with the cost of living increases in Section 7(f), the maximum possible amount that can be awarded to the Petitioner under the guidelines is currently $1570. Respondent Prescott does not disagree with this analysis, and he arguably stated at oral

argument the he would not object to increasing the Petitioner's child support award from $1330 to $1570.

The real question in this case is whether Petitioner's award should exceed the amount spelled out in the guidelines. The new amendments make it clear that the Petitioner bears a high burden in demonstrating the necessity of an upward departure. Chapter III, Section 7(e) states:

> The above guidelines [in Section 7(a)] are binding on each case unless the Court makes express findings of fact as to the reason for departure below or above the guidelines. Such findings shall be express and shall address each of the areas of consideration.

Chapter III, Section 7(b) goes on to state:

> In addition to the child support guidelines, the Court shall take into consideration the following factors in setting or modifying child support:
>
> (1) The physical, mental and emotional needs of the child(ren) to be supported, as documented by medical professionals or experts working directly with the child(ren). Said services shall be necessary for the child(ren) to maintain a healthy existence and may include therapy; medical, psychological, behavioral or chemical dependency treatment; accommodations for special physical or mental needs and special educational requirements in excess of that which is covered by Tribal insurance or programs. Said services shall not include those items which affect the lifestyle of the child, including but not limited to private school attendance and extra-curricular activities . . .

That same section goes on to specifically state:

> The Court shall not consider the following factor(s):
>
> (1) The standard of living the child would have enjoyed had the marriage not been dissolved; had the parents resided together or continue to reside together.
>
> . . .

The wording or Chapter III, Section 7 indicates that there is a presumption that awards derived under the guidelines are sufficient to support a particular child, but that this Court may exceed the guidelines in a particular case, provided that the Petitioner is able to present concrete evidence of a physical, mental, or emotional need of the child that is not covered by Tribal insurance or programs, and which is not related to the child's lifestyle needs.

Consistent with the above sections, for the purposes of this case, Chapter III, Section 7(g)(2) states:

> The terms of a decree respecting child support may be modified upon a showing of one or more of the following, and of which makes the terms unreasonable and unfair:
>
> > (i) substantially increased or decreased earnings of a party;
> > (ii) substantially increased or decreased need of a child for which support is ordered;
> > . . .

Therefore, in order to demonstrate that the child support award should be modified, the Petitioner must demonstrate that one of the elements of Chapter III, Section 7(g)(2) are met in such a way as to render the present child support award unreasonable and unfair. The Domestic Relations Code also emphasizes that this Court is to "take into primary consideration the needs of the children . . ." See Chapter III, Section 7(g)(3)(i).

As noted above, the Respondent does not object to increasing the child support order to the maximum allowed under the Community's guidelines. That would reflect an increase from $1330 to $1570 a month. Beyond that, however the Respondent claims the Petitioner has failed to adequately support her motion to exceed the guidelines.

The Court is inclined to agree with the Respondent. Many of the expenses Petitioner claims are not clearly related to physical, mental or emotional needs that are documented by a medical professional or expert. For example, in her Affidavit in Support of Motion for Modification of Child Support, Petitioner states that her home is in need of additional maintenance, including "$800 for a new door, $9,000 for new carpeting, flooring and

painting and $7,700 for a new water heater, a furnace, refrigerator and washer dryer." In her monthly budget attached to one affidavit Petitioner list an expense for "music lessons" at $1200 a month. Petitioner has included absolutely no documentation to support these expenses (particularly the unusually high number for music lessons), and she does not explain how the home maintenance costs translate into the child support increase of $2,257 that she claims.

Even if she had supported these claims with evidence, or an explanation of the relationship of these claims to her child support budget, it is not clear these costs are properly considered support for her child. While the Court acknowledges that the child clearly needs a home to live in, the child is not the only occupant of this home, and therefore, not the only beneficiary of these home improvements. In addition, there is no way for the Court to evaluate the validity of the claimed home maintenance or music lessons expenses on the present record. The amendments to the Domestic Relations Code make it clear that items that affect the lifestyle of the child, presumably including such things as home improvements, and specifically including extracurricular activities, are not sufficient reasons to support an upward modification. See Domestic Relations Code, Chapter III, Section 7(b)(1).

The Petitioner had also not indicated what has changed to make the current support order unfair or unreasonable. She alleges that the child is in a special education program at school and that he has recently been diagnosed with "Pervasive Developmental Disorder, not otherwise specified." However, the Petitioner has not made it clear how any of the claimed child support increases are required because of this diagnosis. For example, the report from the Alexander Center for Child Development, in the last section entitled "Diagnostic Impressions", submitted by the Petitioner states:

> [C.] is a young man with documented ability in the above average range. . . . His achievement scores are commensurate with this ability. He did not display any significant weaknesses or strengths academically. It appears that his skills are evenly developed and he is making progress academically at school. This is consistent with the teacher reports as well.

> According to this team assessment, [C.] did meet criteria for Pervasive Developmental Disorder – No Otherwise Specified. At this time, this disorder is not affecting his ability to learn at school. However, it will affect his social skills and may, over time, affect academics as the work becomes more abstract and [redacted] is required to complete a greater amount of work. It would be appropriate for [redacted] to receive Special Education services under the category of Autism Spectrum Disorders.

The report then goes on to discuss specific recommendations that the Petitioner and special education professionals at school may want to undertake. However, none of these recommendations include any significant costs, nor do they appear to relate in any way to the home maintenance and musical instruction costs the Petitioner requests in her motion. The Petitioner, therefore, has failed to demonstrate how the needs of the child have changed such that the current child support award, at the guideline maximum, is unfair or unreasonable.

The only other basis for awarding an upward modification is a substantial increase or decrease in one party's earnings such that the current child support award is unfair or unreasonable. See Chapter III, Section 7(f)(2)(i). In her affidavits, Petitioner does not specifically allege that either her income has decreased or the Respondent's income has increased. Instead, she make undocumented and non-specific allegations that Respondent's per capita payments have increased significantly.

Even if the Petitioner in this case had presented conclusive evidence that Respondent's per capita payment have increased, which she has not, the Court concludes that this allegation would be insufficient to show the present child support award is unfair or unreasonable. First, it is not clear that General Council intended for this Court to exceed the child support guidelines solely on the basis of increased per capita payments. Presumably, when the General Council set the current support guidelines, it was aware of the Community's per capita program. If the General Council had wanted to increase the support guidelines every time per capita payments were increased, it could have done so in the statute. If the Court were to accept the Petitioner's argument, and exceed the support guidelines on the basis of increased per capita payments, the guidelines would

cease to apply for Community members. In other words, if Petitioner had her way, increasing per capita payments would become a *per se* reason to exceed the support guidelines, which would render the support guidelines meaningless for Community members. This result would defeat the purpose of the support guidelines in the first instance, which was presumably to provide an upper limit for financial exposure for child support for Community members who received per capita payments.

In any event, even if an increase in per capita payments was a sufficient reason to exceed the guidelines, Petitioner has not shown how Respondent's increase in income has rendered her present child support award unfair or unreasonable. While the Petitioner would obviously like to have the Respondent pay an increased amount to maintain her home, it does not follow that it is unfair or unreasonable if he does not. And based on the record before the Court, Petitioner's request for $1200 a month for musical lessons is simply not reasonable.[1] In addition, given the alleged disparities in income between the two parties, it seems reasonable that the Respondent pay 75% of uninsured medical costs, but it does not seem reasonable that he pay all of such costs.

As for Petitioner's other requests, the Respondent states that an automatic withdrawal system has already been established with the Community for his monthly support payments, so the issue is moot. The Court is willing to accept the Respondent's representations on this point, however Petitioner may renew her motion, on this point only, if such an automatic withdraw system has not in fact been established.

Petitioner also claims that the Respondent delayed in having their child admitted as a member of the Community and that either she or the child is therefore entitled to an

---

[1] The Court has considered, on its own, that the costs for child care (at $60 a month) and music lessons (at $1200 a month) may have been reversed since they are next to each other on the budget chart. However, if this were the case, the $1200 request would be completely inconsistent with the Petitioner's recent representations to the state court that she is not incurring any child care expenses. See Order Terminating Child Care Contribution; Order for Bad-Faith Attorney's Fees, at 1. In the state court's May 29, 2002 order, it found that although the Petitioner did not incur child care expenses for several years, she continued to accept $400 a month in child care costs from the Respondent. The court concluded that the Petitioner was not incurring any child care costs and was liable for an award of bad faith attorney's fees under state law. It seems improbable, at best, that the Petitioner would be claiming to incur $1200 a month in child care expenses in this Court, when the state court had recently found her child care expenses were zero.

amount of damages equal to the retroactive tribal membership benefits the child missed from an unspecified time until he was enrolled. There are numerous problems with Petitioner's claim. First, she has not supported her claim with any evidence. The Court does not have before it any documentation or admissible evidence indicating that the Respondent engaged in any intentional delay, or the length of the delay, or the cause of the delay. In fact, there are not even any allegations as to when the child was admitted, or when, specifically, the Petitioner thinks he should have been admitted. The Court will not allow any relief to a party that proceeds solely on bare, non-specific, and unsupported allegations.

Second, even if the Petitioner had supported her claim with admissible evidence, this Court cannot provide the relief she seeks. This Court has noted in the past that under the Enrollment Ordinance, the Community is not required to make final enrollment decisions within any set timeframe. Clifford Crooks, Sr. v. SMS(D)C, No. 016-97 (SMS(D)C Ct. App. Jan. 30, 1998).

In Crooks, the Plaintiff claimed that the Community had impermissibly delayed a decision on this membership application. The Court of Appeals ruled that as an applicant for membership, Crooks lacked an interest in membership that could support a Due Process claim. The Court also noted that since the Community's Enrollment Ordinance did not require the Enrollment Committee or the General Council to act on an application within a certain timeframe, his claim for delay could not succeed. Id. at 5-6.

Since the Community is not required to act on an application within a set period of time, even if the Respondent had acted earlier, it would impossible to say with any certainty that an early application would have necessarily meant an earlier admission date for the child. And even if the Court were to assume that an earlier application, in general, would have resulted in an earlier admission date, it would be impossible to say exactly when the child may have been admitted. Petitioner's claim for damages resulting from Respondent's alleged delay is denied.

Lastly, Petitioner's request that the Respondent pay the child's naming ceremony expenses is not supported by any cause of action under the Community's law. A one-time, relatively modest expense for the naming ceremony does not render Respondent's present child support award unfair or unreasonable under the Domestic Relations Code. Petitioner has not identified any other legal theory for this expense. If the Court were to honor Petitioner's request, without any basis in law, there would be nothing to prevent the Petitioner, or future petitioners, from returning to this Court every time they incurred an unusual expense to seek compensation from the non-custodial parent.

Lastly, since Petitioner's claims for relief are denied, there is no basis to award her attorney's fees for bringing this motion.

ORDER

Petitioner's motion for an upward modification of her child support payments is denied.

Respondent's obligation under tribal law for child support is the maximum allowed under the Domestic Relations Code or $1570 a month. Respondent is not required to pay the entire amount of Petitioner's out of pocket dental and medical expenses. Instead, as decreed in state court and given full faith and credit under this Court's February 19, 2002 order, the Respondent is to bear 75% of such costs and Petitioner is to bear 25% of such costs. Petitioner's request for damages resulting from Respondent's alleged delay in enrolling the child is denied. Lastly, the parties to bear their own attorney's fees and costs for this litigation.

Dated: November 25, 2002

Henry M. Buffalo, Jr.
Judge