IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY
FILED
NOV 2 5 2002
JEANNE A. KRIEGER
CLERK OF COURT

IN THE TRIAL COURT OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT | STATE OF MINNESOTA

Jill Marcia Wright,

Petitioner,

v.

Leonard Prescott,

Respondent.

Case No. 487-02

MEMORANDUM OPINION AND ORDER

As with a similar case filed in this Court and heard at the same time, see Cannon v. Prescott, No. 486-02 (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 ordering the Respondent to do the following:

(1) to pay $1,331.25 a month in child support,
(2) to maintain health insurance through the Community, and that the parties would each pay 50% of uninsured medical and health expenses,
(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 April 10, 2002, the Minnesota state court issued a subsequent order in the same state court case. The order noted that with the cost of living increases under state law,

Respondent's monthly child support obligation had been increased to $1,597.50. In addition, the order concluded that the Petitioner had misrepresented her child care expenses, and it ordered that the Respondent be reimbursed for those expenses and at least part of his attorneys fees. Most significantly for the purposes of this case, the April 10, 2002 state court order also denied a motion by the Petitioner to have the child support award increased.

After the state court issued its April 10, 2002 order denying the Petitioner's request for an upward modification of her child support award, she filed a motion on June 14, 2002 in this Court largely repeating her request for an upward modification. Specifically, the Petitioner has asked for an increase of $2,145 to the monthly child support award allowed in state court of $1597.50. She has asked that the Respondent establish an automatic deposit system for his child support payments. In addition to the increase in child support, Petitioner has also asked that Respondent pay any out of pocket, uninsured medical and dental expenses associated with the child's dental and special education needs, and that she be awarded attorney's fees for this motion. Lastly, Petitioner has submitted a supplemental affidavit seeking reimbursement of $552.24 for the child's naming ceremony. Petitioner supported these requests with affidavits and exhibits.

LEGAL DISCUSSION

Respondent has argued that Petitioner's request should be denied before even reaching the merits of her claims. First, he claims the automatic deposit system has already been established, and therefore, the issue is moot. Second he claims since Petitioner's request for an upward departure is the same as her request in state court, it is barred by either the doctrines of full faith and credit and/or res judicata.

With this latter argument, the Respondent has essentially asked the Court to recognize and give effect to the state court's April 10, 2002 order denying Petitioner's request for an upward modification. Petitioner has responded that since there is nothing to prevent

her from going back to state court to request another modification, her request for modification in this Court should not be barred either.

In the past, this Court has granted full faith and credit to state court child support orders when there is no complaint that the state court proceedings were irregular in some way, or that the state court was without jurisdiction. McArthur v. Crooks, No. 067-96 (SMS(D)C Tr. Ct. Aug. 13, 1996). Petitioner claims, not that there was a flaw in the state court proceedings, but that she could return to state court with a new modification request at anytime, therefore, she should not be barred from seeking an upward modification in this case. In a sense, the Petitioner is correct – this Court cannot, on the basis of the April 10, 2002 order, forever bar her from seeking an upward modification in this Court if she has new arguments or evidence to present.

However, the key distinction is whether the present request for an upward modification is a "new" request, or whether it is simply a repeat of the request she made in state court. If it is the latter, then it looks like the Petitioner may simply be attempting to get from this court what the state court would not grant her – an upward modification based on the same facts.

A thorough review of the record reveals that Petitioner's request is largely identical to her recent request in state court. In both filings, she asks for an upward modification based on the cost of potential future dental and special education costs. According to the Petitioner, these costs include piano lessons, the purchase of a piano, and voice lessons.

However, whether this Court should grant full faith and credit to the state court decision to deny the upward modification is largely hypothetical. Without reaching the full faith and credit issue, a review of the record demonstrates that the Petitioner has failed to carry her burden on the merits, and her motion is denied on those grounds.

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 $1,331.25 a month.

Petitioner has conceded that this amount may be increase to $1570 under the Domestic Relations Code guidelines. The question 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, any 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).

It is not clear, however, in this case what has changed to make the current support order unfair or unreasonable.

If Petitioner claims under Chapter III, Section 7(g)(2)(ii) that it is the needs of the child that have changed, she has not adequately supported that claim. For example, although the Petitioner alleges that the child is in a special education program at school, this has been true since at least 1997, and there is no new evidence of a significant increase in expenses, or changes in the child's circumstances, at least as they relate to the child's

educational needs. In fact, the report the Petitioner attached to her affidavit indicates that in the most recent school year (2001-2002), the child declined to receive special education services from her local school district, despite steady progress in those programs. Rather, the Petitioner had decided to pursue private tutoring instead. For example, there is a budget item for $200 a month for special education, and yet there is no documentation concerning why the special education services of the local school district were so inadequate at to require private tutoring. The new amendments to the Domestic Relations Code also make it clear that expenses related to private education are not to be considered in modifying a child support award. See Chapter III, Section 7(b)(1).

In addition to a lack of any significant change in circumstance, the budget Petitioner submitted has very large expenses that are simply not supported by any evidence of need, either new or old. The budget includes $625 dollars a month (or nearly $10,000 a year) for out of pocket dental expenses, and yet there is no evidence in the record that these expenses have been incurred, or if they are future expenses, how this total was derived or why these expenses are not covered by the child's insurance.

Petitioner's budget also includes nearly $350 a month (or over $3000 a year) for household furnishings, $125 a month for a new washer and dryer and new carpeting, and nearly $100 a month for a computer and computer games. These are not costs that show there has been a change in the child's circumstance justifying modification. Instead, these appear to be expenses associated with the child's lifestyle, which are not factors to be considered in modifying an award. See Chapter III, Section 7(b)(1).

In addition to the $200 a month for private tutoring, Petitioner claims that the child's special education needs justify private music and dance lessons. These costs are reported on the budget at nearly $450 a month (or over $5000 a year). While Petitioner has included in her affidavits two letters from teachers at the child's school suggesting piano lessons would be a good idea for the child, the only receipt for piano lessons amounts to less the $75 a month. It is not at all clear how the Petitioner arrives at the $450 a month

figure for private lessons, or how that amount is related to a documented changed need in the circumstance of the child.

Simply put, a majority of the expenses listed in the Petitioner's budget have nothing to do with a change in the child's need, and even if they did, the Petitioner has failed to adequately document the changed need or the amount of the expenditures.

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(g)(2)(i). In her affidavits, Petitioner does not specifically allege that either her income has decreased or the Respondent's income has increased. However, in a related case with a different Petitioner, unsupported allegations have been made 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.

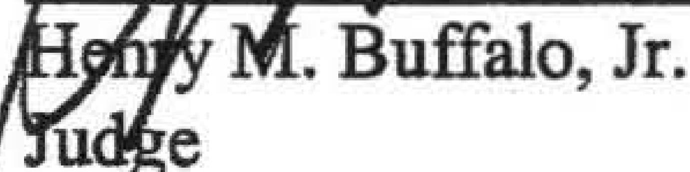
In any event, even if an increase in per capita payments was a sufficient reason to exceed the guidelines, Petitioner has not shown how Respondent's increase in income has rendered her present child support award unfair or unreasonable.

Lastly, Petitioner's request that the Respondent pay at least half of 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 and seeking reimbursement from the non-custodial parent.

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 guidelines or $1570 a month. Respondent is not required to pay the entire amount of Petitioner's out of pocket dental and medical expenses. As decreed in state court and given full faith and credit under this Court's February 19, 2002 order, the parties are to each bear 50% of those expenses. Lastly, the parties to bear their own attorney's fees and costs for this litigation.



Dated: November 25, 2002

Henry M. Buffalo, Jr.
Judge