TRIBAL COURT OF THE SHAKOPEE

MDEWAKANTON SIOUX COMMUNITY

SMSC RESERVATION **STATE OF MINNESOTA**

Daniel Edwin Jones,

Petitioner,

vs. Court File No. 491-02

Michelle Marie Steinhoff,

Respondent.

MEMORANDUM OPINION AND ORDER

On May 13, 2020, the Petitioner moved for "an order reducing/ending/terminating the child support award in this case". The Respondent has opposed that motion, and on June 5, 2020 moved for (i) $17,500, in a lump sum, as a retroactive increase in the adjusted child support that the Court awarded to her in August, 2017; (ii) an award of $88,928.61 reflecting what she contends are mandatory cost of living adjustments to the child support that she has received from the Petitioner since November, 2002; and (iii) an award of $24,908.60 in attorney's fees.

For the reasons set forth below the Court grants the Petitioner's motion and terminates his support obligation effective on the date that his motion was filed, and denies the Respondent's motions.

I. The History of the Petitioner's Child Support Obligation.

As this Memorandum Opinion and Order is being written there are 130 entries in the Court's pleadings log for this file, a fact that reflects the complex and often fraught nature of the parties' relationship over time. The Petitioner's present child support obligation was established by this Court's July 25, 2017 Memorandum Opinion and Order ("the July 25, 2017 Order"), in which the Court summarized the history, to that point, of the parties' agreements, disputes, and

litigation concerning support payments. The history began shortly after the birth of the parties' son, in February, 2002. In November, 2002, the parties stipulated, and the Court ordered, that the Petitioner would pay the Respondent $2,000.00 per month for child support. The stipulated order noted that –

> This is a voluntary upward departure from the child support guidelines and [sic] being paid in consideration of the following: [Respondent] legally changing the name of the minor child as stated herein [to give him the Petitioner's surname] and making all changes to legal records of the same; [Respondent] cooperating with the enrollment process of the minor child into the Shakopee Mdewakanton (Dakota) Community; and [Respondent] continuing to permit and encourage the minor child to participate in the Mdewakanton Sioux (Dakota) Community functions and programs.
>
> The child support payments shall continue until the minor child covered by this Order reaches the age of 18, or 20 if still in secondary school; or until the child covered by this Order becomes emancipated, marries, or dies; or until further Order.
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> (Emphasis added.)

The stipulated order also contained a provision relating to additional payments the Respondent would receive, to compensate her for day-care expenses that she would incur:

> The [Petitioner] shall also pay the reasonable work-related and school-related day care expenses of the minor child. The [Respondent] expects to incur work related and school-related childcare expenses of approximately $1,040 per month. That [sic] [Petitioner's] obligation to pay said expenses shall commence upon verification that said expenses are being incurred. That [sic] the [Respondent] shall provide notice to the [Petitioner] and any entity responsible for income withholding if and when said expense decreases and thereafter the Plaintiff's obligation shall be adjusted accordingly.

In 2016, prompted by the fact that his *per capita* payments from the Shakopee Mdewakanton Sioux Community had become significantly less than they were in 2002, the Petitioner initiated proceedings seeking, *inter alia*, to reduce his support obligation, and the Respondent countered by asking to have his obligation increased. Considerable litigation followed, concluding with the July 25, 2017 Order.

What the Court said at that time, summarizing its reasoning when it reduced the Petitioner's support obligation but did not reduce it to the level the Petitioner sought, is relevant to the present proceedings. The Court said:

> The parties here bargained for and agreed to a particular amount of support and, in the Court's view, that agreement was binding on them. Effectively, in the Court's view, their agreement was a contract. Absent their agreement, the Respondent was under no obligation to give her son the Petitioner's surname, nor was she under any obligation to cooperate in the process of his enrollment in the Community; but, having made the agreement she undertook those obligations, and she met them. So, had no other relevant

events occurred, the Court likely would now conclude, given the parties' respective economic situations, that the Petitioner continues to be bound by his agreement, and that nothing in the Code authorizes or warrants adjusting the obligations he willingly undertook.

But there were other relevant events: the Respondent breached her obligation to inform the Petitioner that she no longer had day care expenses, and so, for several years, she collected thousands of dollars to which she was not entitled.

In the [Shakopee Mdewakanton Sioux Community's Domestic Relations] Code, the Community tells the Court that it "may modify" an award of child support if the award is "unreasonable and unfair", and if one or more of five listed factors exists. But the Code makes it clear that, in making any modification, the Court must "take into primary consideration the needs of the children". Here, it is clear that at least one of the Code's listed factors – a reduction in the Petitioner's income greater than 2.5% -- exists. But the words that the Code uses to guide the Court in considering any reduction – "unreasonable and unfair" – are powerful, and applying them to a situation where one party is in a vastly better economic situation that the other, but where the other party has knowingly taken monies to which she was not entitled, and yet where that party's present situation now qualifies her (or may qualify her) for a state-funded health insurance program, is not easy. The Code's phrasing – the Court may modify, but it is not mandated to modify – means that the Court has at least some discretion to consider equitable factors in making its decision.

The Petitioner argues that, given the uncertainty attending the Respondent's past and future earnings, the Court should simply look to Chapter III, section 7.c(1)(iii) of the Code and impute to the Respondent a gross monthly income of 150% of the state minimum wage, reduced by federal and state income taxes, and by social security and medicare taxes. That process would give the Respondent an imputed monthly income of $1,992.56; and with adjustments based upon parenting time, would lead to a formulaic award of $936.59 per month.

But, having carefully weighed the evidence (for a considerable period of time), the Court concludes that although it should modify the parties' child support arrangement, it should not reduce the presently effective amount by more than one-half. The Court believes that the Respondent at present is underemployed: she likely can work more hours that she has, she likely can receive a higher wage than she has been receiving, and although she has had health concerns she is not in any way disabled. But if the child support she receives were to be reduced by more than half – by more than $1,000 per month – the Court is of the view that the Respondent could not replace that loss with increases in her own income. And it is clear to the Court that the life that the parties' son has with the Respondent, which has been shaped by the monies available to the Respondent, therefore would be adversely affected. Again, this is not a situation where the Court is establishing an initial support matrix; the life of the child whose support is at issue – and whose needs must receive "primary consideration" under the Code – would, in the Court's view, likely be adversely affected by the support reduction that the Petitioner proposes.

Ultimately, given the precatory nature of the Code's language, the equitable considerations that are central in the "unreasonable and unfair", and the central importance of ensuring that the parties' son does not suffer because of the Court's action,

> the Court concludes that the Respondent can and should be able to improve her monthly take-home pay by $500.00 per month, and that therefore a reduction in the Petitioner's obligation in that amount will not work harm to the child and is appropriate under Chapter III, section 7.l of the Code. But that conclusion – that the child will not be harmed by the reduced award – clearly could not be reached if the reduction were made retroactive to August, 2016, and therefore the reduction must be prospective only.
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> (Emphasis in original)

II. The Petitioner's Motion.

The parties' present situation – their son's situation – is radically different than it was at the time of the July 25, 2017 Order was entered. Today, taking "into primary consideration the needs of the [child]", as Chapter II, Section 7.l. of the Code requires when a child support modification is sought, the Court concludes that the termination of the Petitioner's obligation clearly will work no harm to the parties' son. On February 12, 2020, his eighteenth birthday, the son received a considerable sum from the trust account that the Shakopee Mdewakanton Sioux Community had been holding for him, and he began receiving *per capita* payments from the Community.

It bears emphasizing that the agreement that the parties entered into in 2002, and that became the Court's November 21, 2002 Order, did not by its terms automatically terminate child support on the boy's eighteenth birthday. The parties agreed that they would do whatever they could to obtain Community membership for their son, and at the time of their stipulation *per capita* payments for members, and payments into the trusts for minor members, were more than they are today, but the stipulation nonetheless did not specify that the receipt of trust or *per capita* monies would be an automatic terminating event. It said that support would continue "until the minor child covered by this Order reaches the age of 18, or 20 if still in secondary school; or until the child covered by this Order becomes emancipated, marries, or dies; or until further Order". As the Court observed in its May 4, 2020 Memorandum Opinion and Order, the use of the term "emancipated", a legal term of art, has no applicability to their son's situation. And the fact is that on his eighteenth birthday their son did not gain unfettered access either to his trust monies or to his *per capita* payments, because his funds are controlled, under the Shakopee Mdewakanton Sioux Community's Conservatorship Ordinance, by his Court-appointed Conservator of Estate.

But given the record in this file – given the amounts that he does receive and has received – the monies that he has controlled and does control are, in the Court's view, more than sufficient to assure that his needs are met. On April 2, 2020, at the Court's request, the Conservator of Estate submitted a memorandum for the record, summarizing the present status of the funds available to the parties' son. In pertinent part the Conservator said –

> 1. I am providing this report in advance of a hearing in the matter of *Daniel Jones vs. Michelle Steinhoff,* SMSC Court File No. 41-02. The Clerk of Court directed the Conservator of Estate for Trevor Jones via e-mail dated March 30, 2020, to provide information regarding any financial support established under the Conservatorship for the benefit [sic] Ms. Steinhoff, mother of Conservatee Trevor Jones, prior to an April 2, 2020, hearing.
> 2. The Conservatorship has not established any amount of funds for the benefit of Ms. Steinhoff that would be paid out of Trevor Jones's estate. Nor is the Conservator aware of any obligation for such payments.
> 3. Trevor Jones is 18 years of age and he has not yet graduated from high school. He still resides with his custodial parent, Michelle Steinhoff. He does not pay rent or utilities to his mother.
> 4. Michelle Steinhoff has inquired about whether she can be added onto Trevor Jones's health insurance through the Community in some capacity so as to have her health insurance provided through him. The Conservatorship has not yet determined whether that is appropriate or possible.
> 5. During the present uncertain circumstances of the "stay home" order resulting from the Covid-19 pandemic, Trevor has told me that <u>he has been helping with supplies and food at home</u>.
> 6. Certain funds are being provided from the estate to Trevor Jones on a weekly basis, the amount of which varies depending on his attendance at high school. Specifically, <u>Trevor Jones is eligible to receive $1,000 per week as an allowance if his high school attendance is 80% or higher; if he does not meet the attendance requirement, Trevor Jones receives $500 per week.</u>
> 7. <u>Thus far he has received $1000 for 2 of the 6 weeks since the plan was initiated</u> It should be noted that because of the Covid-19 pandemic, schools in Minnesota are not open and we are in the process of re-evaluating attendance expectations during the present era of distance learning.
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> …
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> (Emphasis added.)

Hence, the Petitioner's motion is well-founded. Because the motion was filed on May 13, 2020, the Court terminates Petitioner's child support obligation effective on that date. The support obligation cannot, however, be terminated earlier than that date, given the provisions of Chapter II, Section 7.1.(3) of the Code:

> A modification of child support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party. However, modification may be applied to an earlier period if the Tribal Court makes express findings that the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability or a material misrepresentation of another party and that the party seeking modification, when no longer precluded, promptly served a motion.

The Petitioner does not contend that he was precluded from moving to modify his child support obligation before May 13 because of any disability, or that any delay was due to a material misrepresentation by another party. Therefore the modification that the Court can and does grant is effective May 13, 2020, and the payments that the July 25, 2017 Order mandated for March, 2020, and April, 2020, and May 1 – 12, 2020, remain the Petitioner's obligation.

III. The Respondent's Motions.

A. Reconsideration of the July 25, 2017 Order.

The Respondent argues that the Court erred when, in the July 25, 2017 Order, it denied her motion to increase her child support. She contends that when the Court concluded that she was "underemployed" at that time it did not properly consider the time demands that being a mother placed upon her. The Petitioner responds that the Respondent's own submission relating to her present earnings indicate that in fact, after the July 25, 2017 Order, she did in fact experience a very significant increase in earnings – suggesting that the Court's "underemployment" conclusion was valid. But, whether it was valid or not is irrelevant to the Respondent's motion, because under Rule 31(b) of our Rules of Civil Procedure, the time to appeal the July 25, 2017 Order's denial of her requested increase expired on August 25, 2017; and, just as Chapter II, Section 7.1.(3) of the Code gives the Court no power to reach back before the date of the Petitioner's motion to reduce or eliminate his child support obligation, it also gives the Court no power to reach back and retroactively increase the award.

B. Child Support Cost of Living Adjustment.

The Respondent argues that she should be awarded cost of living adjustments to the child support she has received, with the initial adjustment commencing in May, 2004, and additional compounded adjustments every two years thereafter. Her calculation of the total amount that would be payable, should the Court award her the adjustments she seeks, is $88,928.21. And she says:

> Please Note: Domestic Relations Code Chapter II, Section 7.K provides that a cost of living adjustment should be applied to the non-custodial parent's adjusted child support obligation biennially. It does not provide that the application of the adjustment is dependent on any filing in the Court. It also does not provide that the application of the adjustment is restricted from being retroactively, and biennially, from when the Order was established, which is what Respondent is entitled to, and what Respondent is requesting.
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> Respondent's Affidavit with Exhibits (Amended), June 5, 2020, at 15.

Petitioner responds that the Respondent's calculations grossly misunderstand the manner in which the Code contemplates cost of living adjustments are to be made, and the Court agrees. Petitioner also argues that the amounts which the Respondent received for day-care costs during the years that she was not experiencing any day-care expenses vastly exceeds any amount that she could properly claim as cost of living adjustments, and again the Court agrees. But fundamentally, in the Court's view, the Respondent is foreclosed from now seeking retroactive adjustments to the eighteen years of child support because of the specific terms of the stipulation to which she agreed in November, 2002. That stipulation, adopted by the Court's November 21, 2002 Order, said:

> COST OF LIVING INCREASE OF SUPPORT: [Petitioner's] child support obligation may be adjusted every two years based upon a change in the cost of living (using the U.S. department of labor, bureau of labor statistics, consumer price index Mpls. St. Paul for all urban consumers (CPI-U), provided the [Respondent] file [sic] a motion with the Tribal Court seeking said adjustment.
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> (Emphasis added.)

Until the parties' proceedings in 2016 and 2017, which resulted in the July 25, 2017 Order, the Respondent had filed no motions seeking cost of living adjustments, and she testified that she had not done so because she had been receiving day-care payments without having any day-care expenses:

> Q. Have you ever sought or asked for a cost of living adjustment?
>
> A. No, I have not.

Q. Why not?

A. Because I was getting that extra money.

Jones v. Steinhoff, Court File No. 491-02, April 21, 2017 Hearing Transcript, at 75:22 – 76:2.

With the parties' evidence before it, the Court's July 25, 2017 Order established a new child support payment level that became effective on that date. The July 25, 2017 Order did not otherwise modify the stipulated November 21, 2002 Order. Therefore, any award of a cost-of-living adjustment to the Respondent would, pursuant to the November 21, 2002 Order, have required a timely motion from her. The Petitioner argues, with force, that given the support she was receiving by virtue of the July 21, 2017 Order, no cost-of-living award would be mandated by the Code. But the fact that no motion ever was made, before the Respondent's June 55, 2020 filing, means that once again Chapter II, Section 7.1.(3) of the Code bars any retroactive adjustment of support.

C. <u>Attorneys Fees.</u>

The Respondent's motion for an award of attorney's fees relates to litigation, in this file, concerning the Petitioner's visitation with the parties' son. In 2016, in addition to seeking modification of his child support obligation, the Petitioner sought increased parenting time with the boy. Proceedings concerning that issue extended into 2018, and resulted in an Order filed on April 12, 2018, under which the Petitioner was given additional parenting time. Respondent contends that thereafter the Petitioner did not exercise his right to that time – that since April, 2018 the Petitioner and his son have had very little contact – and that therefore Petitioner has "willfully disregarded" the Court's Order and should be penalized under the authority of Chapter IV, Section 2.t, which section pertains to contemptuous conduct.

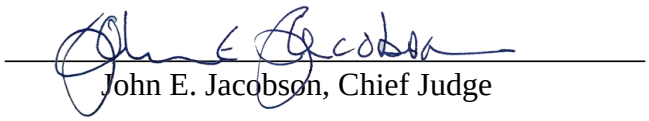
The only document submitted by the Respondent substantiating her attorney's fees – an April 17, 2020 e-mail from the Meagher & Geer law firm summarizing their fees over seven months in 2017 and 2018 – does not specify in any way the work that was involved in the generation of those fees, and therefore it could not serve as the proper basis for an award even if the Petitioner's conduct justified an award. But not exercising parenting time which the Court

has awarded is not contemptuous. The Court did not mandate that the Petitioner exercise the time that he was awarded. Under the Order the Petitioner had the right to exercise the time, but any number of factors, including the wishes of the parties' son, could well have led him to a conclusion that non-exercise was the best course. That may well be deeply unfortunate in terms of the Petitioner's relationship with his son, but it is not contempt of Court.

THEREFORE IT IS ORDERED:

1. The Petitioner's obligation to pay child support pursuant to this Court's July 25, 2017 Order is terminated effective May 13, 2020, but the Petitioner continues to be obligated to pay $1,500 per month for the months of March and April, 2020, and also to pay $580.65 for the period from May 1 to May 12, 2020.
2. The Respondent's motions to retroactively increase her child support payments, and for cost of living adjustments to those payments from 2002 to 2020, and for attorney's fees, are DENIED.

Date: July 6, 2020



John E. Jacobson, Chief Judge