

RACHEL P. CLOUGH

v.

PATRICK H. CLOUGH

Submitted on Briefs April 29, 2014

Decided May 20, 2014

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and  
JABAR, JJ.

## MEMORANDUM OF DECISION

Patrick H. Clough appeals from a judgment entered in the District Court (Portland, *Powers, J.*) adopting orders of the family law magistrate (*Najarian, M.*). The magistrate granted Rachel P. Clough’s motion to enforce the parties’ divorce judgment and granted Patrick’s motion to modify his child support obligation under the divorce judgment. Patrick contends that the magistrate clearly erred in finding that Patrick’s gross income, for purposes of modifying his child support, included checks that he wrote for his personal benefit from the corporate accounts of a subchapter S corporation of which Patrick is a fifty percent shareholder. Contrary to Patrick’s contentions, the magistrate did not err in finding that the checks constituted gross income because they were “income from an ongoing source.” 19-A M.R.S. § 2001(5)(A) (2013); *see also* 19-A M.R.S. § 2001(5)(B) (2013) (“Gross income includes expense reimbursements or in-kind payments received by a party in the course of employment or self-employment or operation of a business if the expense reimbursements or in-kind payments reduce personal living expenses”); *Payne v. Payne*, 2008 ME 35, ¶ 11, 942 A.2d 713 (noting that the definition of gross income “speaks to ongoing cash benefits actually received”). The magistrate, after carefully and thoughtfully analyzing the complex financial record, found that Patrick maintained no boundaries between the

corporation and his personal life and that the disbursed funds were not loans from the corporation to Patrick. *See Epps v. Comm’r*, 70 T.C.M. (CCH) 1, 1995 WL 389638, \*3 (1995) (noting that whether shareholder withdrawals from a corporation constitute bona fide loans depends on, inter alia, whether the parties executed formal loan documents, whether the shareholder attempted to repay the advances, and the extent to which the shareholder controls the corporation); *Walker v. Grow*, 907 A.2d 255, 281 (Md. Ct. Spec. App. 2006) (“[A] court . . . must take special care to ensure that the parent is not utilizing the S corporation to manipulate his or her income to avoid child support obligations.”). We find Patrick’s remaining contentions to be unpersuasive and do not address them separately.

The entry is:

Judgment affirmed.

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**On the briefs:**

Gene R. Libby, Esq., and Tyler J. Smith, Esq., Libby O’Brien Kingsley & Champion, LLC, Kennebunk, for appellant Patrick Clough

Alicia M. Cushing, Esq., Givertz, Scheffee & Lavoie, PA, Portland, for appellee Rachel Clough