

DIANE ROCHON

v.

ADRIENNE (ROCHON) ESPOSITO

Submitted on Briefs June 22, 2016
Decided July 21, 2016

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

MEMORANDUM OF DECISION

Diane Rochon appeals from a judgment entered by the District Court (Lewiston, *Lawrence, J.*) granting Rochon’s motion to enforce and granting in part Adrienne (Rochon) Esposito’s motion to modify the parties’ parental rights and responsibilities order. Rochon argues that the trial court clearly erred when it found her voluntarily underemployed and that the court abused its discretion when it imputed income to her. She also argues that the trial court’s child support order violates 19-A M.R.S. § 2006(5)(C) (2015) because her annual income, not including imputed income, is below the federal poverty guideline.¹ We affirm.

Rochon, who asserted that her only source of income at the time of the hearing was her Social Security Disability Income (SSDI) benefit, testified that although she had “been on disability since 2001,” she had worked—often part-time but for some period full-time—since that time. Rochon testified that she is trained

¹ To the extent that Rochon’s reply brief raised new issues, not responding to arguments in Esposito’s brief, we do not consider those issues. *See Mason v. City of Augusta*, 2007 ME 101, ¶ 17 n.1, 927 A.2d 1146.

as a phlebotomist and that she was earning up to \$1,376 bi-weekly until May 2014. She further testified that she could earn up to \$1,040 per month and not lose her monthly SSDI benefit.

Based on Rochon's testimony, the court found that she was able to work. Based upon this finding,² the court exercised its discretion to impute income to Rochon in the amount of \$1,040 per month and found that she "has monthly income capacity of up to \$1,853.00, or \$22,236.00 annually," which is the combined amount of her imputed income and SSDI benefit. These findings are not clearly erroneous, and the court's decision to impute only enough income to Rochon to allow her to remain qualified for her SSDI benefits demonstrates that the court thoughtfully exercised its discretion.

Rochon also contends that the court's child support order violates 19-A M.R.S. § 2006(5)(C). Section 2006(5)(C) limits the child support obligation that a trial court may impose to no more than "10% of the nonprimary care provider's weekly gross income" if the nonprimary care provider's "annual gross income . . . is less than the federal poverty guideline." Gross income includes imputed income, 19-A M.R.S. § 2001(5)(D) (2014),³ and Rochon's gross income, as found by the trial court, is above the 2015 federal poverty guideline, *see* Fed. Register, *Annual Update of the HHS Poverty Guides, 2015 Poverty Guidelines for the 48 Contiguous States and the District of Columbia*, <https://www.federalregister.gov/a/2015-01120>.

Because Rochon's own testimony supports the court's findings, the court did not clearly err in its findings of fact, including Rochon's voluntary underemployment, and it did not abuse its discretion when it imputed income to her. *See* 19-A M.R.S. § 2001(5)(D); *Carolan v. Bell*, 2007 ME 39, ¶ 19, 916 A.2d 945. Further, because the trial court's finding of Rochon's income is not clearly erroneous, the child support order does not violate section 2006(5)(C).

² The also court noted that Rochon had not filed an updated child support affidavit "to facilitate the court's analysis of her earning capacity," which the court had ordered the parties to do prior to the hearing.

³ Title 19-A M.R.S. § 2001(5)(D) was amended after the proceedings in this matter, though the amendment does not affect the present case. P.L. 2015, ch. 186, § 2 (effective Oct. 15, 2015) (codified at 19-A M.R.S. § 2001(5)(D) (2015)).

The entry is:

Judgment affirmed

On the briefs:

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for appellant Diane Rochon

Justin W. Andrus, Esq., Brunswick, for appellee Adrienne (Rochon)
Esposito

Lewiston District Court docket number FM-2006-379
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