MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 17-49
Docket No. Sag-16-531

MERIDITH C. HACKETT

v.

MATTHEW W. HACKETT JR.

Submitted on Briefs April 27, 2017
Decided May 11, 2017

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

MEMORANDUM OF DECISION

Matthew W. Hackett appeals from a divorce judgment entered by the District Court (West Bath, *Raimondi, J.*) and from the court's orders on his motions to alter or amend the judgment, *see* M.R. Civ. P. 59(e), and for amended or additional findings, *see* M.R. Civ. P. 52(b). He argues that the court committed clear error when it found that Meridith C. Hackett is not "voluntarily underemployed" for the purposes of calculating child support.[1] We disagree and affirm the judgment.

The court found the following facts, which are supported by competent evidence in the record. Meridith works hours currently available to her. She works three days per week plus one weekend per month and receives full

[1] Matthew further argues that in calculating a child support obligation, the court should have imputed income to Meridith based on voluntary underemployment. *See* 19-A M.R.S. § 2001(5)(D) (2016); *Sullivan v. Tardiff*, 2015 ME 121, ¶ 12, 124 A.3d 652 (explaining that the trial court may, in its discretion, "impute earning capacity to a parent *who the court finds is voluntarily underemployed*" (emphasis added) (quotation marks omitted)). We do not reach this issue because, as we discuss, the court's finding that Meridith is *not* voluntarily underemployed does not constitute clear error.

benefits, including health insurance for the parties' two-and-a-half-year-old child. Meridith was the child's primary caregiver during the marriage. The child has had medical and sleep issues requiring special attention and is experiencing difficulty adjusting to the many transitions attendant to the parties' separation. The parties had agreed during their marriage that Meridith's work schedule was best for the child and it is in the child's best interest to continue the contact with Meridith that her current work schedule allows.

Given these facts, the court's determination that Meridith is not voluntarily underemployed did not constitute clear error. Contrary to Matthew's contention, the fact that a person's employment can be characterized as "part time" does not necessarily render that person "underemployed" for the purposes of a child support calculation. Instead, in determining whether Meridith is voluntarily underemployed, the court properly considered factors other than simply the number of hours worked. *See, e.g.*, *Brown v. Brown*, 2007 ME 89, ¶¶ 12-13, 929 A.2d 476; *Carolan v. Bell*, 2007 ME 39, ¶¶ 18-21, 916 A.2d 945. Nothing precluded the court from considering the child's best interest.[2]

The entry is:

Judgment affirmed.

Joe Lewis, Esq., Port City Legal, Portland, for appellant Matthew W. Hackett Jr.

Janet K. Kantz, Esq., Vincent, Kantz, Pittman & Thompson, LLC, Portland, for appellee Meridith C. Hackett

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[2] Indeed, consideration of the "best interest of the child" pervades title 19-A of the Maine Revised Statutes. *See, e.g.*, 19-A M.R.S. § 2007(1), (3)(A), (O), (Q) (2016) (authorizing the court to deviate from a child support obligation calculated pursuant to the child support guidelines under circumstances relating to the child's best interest).