Reporter of Decisions Decision No. Mem 09-4 Docket No. Pen-08-281

ADAM P. LAUER

V.

KIMBERLY ANN ELLIOTT

Submitted on Briefs December 12, 2008 Decided January 6, 2009

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Kimberly Ann Elliott appeals from a post-divorce judgment entered in District Court (Bangor, Murray, R., J.) awarding her back spousal support and finding no substantial change in circumstances to warrant a modification of the existing spousal and child support orders. In calculating Adam P. Lauer's gross income, the court properly included Lauer's annual salary as well as his in-kind payments, which reduced his living expenses. See Knowles v. Knowles, 588 A.2d 315 (Me. 1991). Contrary to Elliott's contentions, on the record presented, the court did not abuse its discretion in not including as part of Lauer's gross income the profits of Lauer's subchapter S corporation, which were sold to pay other business expenses, and costs for a new office building. See 19-A M.R.S. § 2001(5) (2007) (defining gross income for purposes of determining child support); see also Macomber v. Macomber, 2003 ME 1, ¶ 7, 814 A.2d 456, 458 (applying the child support statute's definition of gross income to determine spousal support). Because the court correctly applied the statutory definition, its determination that there was not a substantial change in Lauer's gross income was within the bounds of its discretion. See Dargie v. Dargie, 2001 ME 127, ¶ 26, 778 A.2d 353, 359 (stating that this Court will vacate a spousal support determination only when the court violated a positive rule of law or reached a plainly unjust result).

The entry is:

Judgment affirmed.

Attorney for Kimberly Ann Elliott:

Charles W. Hodsdon, II, Esq. PO Box 1006 Bangor, Maine 04402-1006

Attorney for Adam P. Lauer:

Lawrence A. Lunn, Esq. Hall & Lunn 107-111 Columbia Street Bangor, Maine 04401