THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2013-0790, In the Matter of Susan R. (Floros) Wallack and Peter N. Floros, the court on November 20, 2014, issued the following order:

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm in part, vacate in part, and remand.

The respondent, Peter N. Floros (father), appeals post-divorce orders of the Circuit Court (Sullivan, J.) modifying his child support obligation to the petitioner, Susan R. (Floros) Wallack (mother), see RSA 458-C:7 (Supp. 2013), and enforcing a provision of the parties' 2003 permanent stipulation requiring that he contribute to the college education costs (college costs provision) of their adult daughter, Violet Floros (Violet). He argues that the trial court erred by granting Violet's motion to intervene, by arriving at arbitrary and unsupported income figures, and by failing to engage in a "cash flow" analysis to determine his income.

We first address whether the trial court erred by granting the motion to intervene. "A person who seeks to intervene in a case must have a right involved in the trial and [her] interest must be direct and apparent; such as would suffer if not indeed be sacrificed were the court to deny the privilege." In the Matter of Goodlander & Tamposi, 161 N.H. 490, 506 (2011) (quotation omitted). The trial court has discretion to allow a party to intervene, and ordinarily should grant such a motion if the party "has a right involved in the trial and a direct and apparent interest therein." Lamarche v. McCarthy, 158 N.H. 197, 200 (2008). We will not overturn the trial court's decision on a motion to intervene unless we are persuaded that its exercise of discretion was unsustainable. Id. To show that the trial court unsustainably exercised its discretion, the father bears the burden of demonstrating that its ruling was clearly untenable or unreasonable to the prejudice of his case. In the Matter of Hampers & Hampers, 154 N.H. 275, 280 (2006). "This means that we review the record only to determine whether it contains an objective basis to sustain the trial court's discretionary judgment." Id. at 281.

The college costs provision requires the father and mother to contribute to their children's post-high school education costs "proportional to their then income and assets." In May 2011, Violet, who was then twenty-two years old, moved to intervene in the divorce and to enforce the college costs provision. She asserted that the father, who had been paying half of her college tuition

and fees, and who had been contributing toward her living expenses, had recently stopped paying all college costs and expenses after she requested information from him concerning a trust and a partnership in which she had interests. She claimed that she is a third-party beneficiary of the college costs provision. Although the mother assented to the motion to intervene, the father objected, contending that the relief Violet sought could be attained by demand of the mother pursuant to the stipulation. The trial court granted the motion.

Relying upon In the Matter of Stapleford & Stapleford, 156 N.H. 260 (2007), the father argues that the trial court erred because children generally have no right to intervene in their parents' divorce, and because the mother was available to enforce the college costs provision. According to the father, "within a month of Violet's request for intervention, [the mother] joined Violet's effort, making [the mother] a willing and able party to enforce the stipulation." The father further asserts that "[a]llowing intervention here suggests intervention in a multitude of unexceptional cases where children might like to enforce agreements made between their parents." We disagree.

In Stapleford, we rejected an argument that the trial court, in denying a motion to intervene in a divorce filed by minor children in order to address custody, had erred by not applying the "direct and apparent" interest test. Although we acknowledged that minor children arguably have an interest in their own custody, we reasoned that they do not have the same legal rights as adults, and that the law protects their interests through the appointment of guardians ad litem. See Stapleford, 156 N.H. at 263. We likewise rejected an argument that minor children have a due process right to intervene in divorce proceedings, noting that the guardian ad litem process protects the interests of minor children, and that allowing minor children to intervene in divorces would exponentially complicate the divorce process. See id. at 264-65. Nothing in Stapleford limits the ability of an adult child to intervene in her parents' post-divorce litigation to enforce or protect her interest under the terms of the divorce decree. See Goodlander Tamposi, 161 N.H. at 506 (allowing adult children to intervene in divorce to protect their interests in property subject to the divorce).

Here, the father concedes that, at the time Violet moved to intervene, the mother was hesitant to enforce the college costs provision. Moreover, the father has not demonstrated how allowing Violet to litigate the college costs provision has caused him prejudice. See id. (noting that the appealing party had failed to demonstrate how he had been financially harmed by the intervention). We conclude that the father has failed to demonstrate that the trial court's order allowing Violet to intervene was clearly untenable or unreasonable to the prejudice of his case. Hampers, 154 N.H. at 280.

We next address the father's arguments concerning the trial court's determinations of income. In calculating a parent's child support obligation, the trial court is required first to determine each parent's income. In the Matter of Crowe & Crowe, 148 N.H. 218, 222 (2002). Likewise, enforcing the college costs provision in this case required that the trial court determine the parties' "then income."

To determine a self-employed parent's "gross income" for purposes of RSA 458-C:2, IV (Supp. 2013), the trial court is generally required to deduct legitimate business expenses from business profits. In the Matter of Maves & Moore, 166 N.H. ___, ___ (decided August 13, 2014); In the Matter of Woolsey & Woolsey, 164 N.H. 301, 306 (2012); see also In the Matter of Hampers & Hampers, 166 N.H. ___, ___, 97 A.3d 1106, 1120-21 (2014); In the Matter of Albert & McRae, 155 N.H. 259, 263 (2007). To constitute deductible business expenses under RSA 458-C:2, IV, the expenses must be both "actually incurred and paid," and "reasonable and necessary for producing income." Woolsey, 164 N.H. at 307 (quotations omitted). Within the context of net rental income, legitimate business expenses may include payments on a mortgage encumbering the rental property. See Albert, 155 N.H. at 263.

The amount of business expenses an obligor parent has incurred, and whether the expenses were incurred and were reasonable and necessary for producing income, are factual matters for the trial court to determine. See Hampers, 97 A.3d at 1121; In the Matter of Sullivan & Sullivan, 159 N.H. 251, 255 (2009). The federal income tax code is of little relevance to these determinations. Albert, 155 N.H. at 263. It is the burden of the parent seeking to deduct an expense to demonstrate its deductibility. Hampers, 97 A.3d at 1122. We defer to the trial court on matters such as "resolving conflicts in the testimony, measuring the credibility of witnesses, and determining the weight to be given evidence." In the Matter of Aube & Aube, 158 N.H. 459, 465 (2009). "If the court's findings can reasonably be made on the evidence presented, they will stand." In the Matter of Brownell & Brownell, 163 N.H. 593, 596 (2012) (quotation omitted).

In this case, the trial court held an evidentiary hearing on June 12, 2013, to determine the parties' income for purposes of both child support and the college costs provision. The evidence submitted at the hearing established that the father reported taxable income of approximately $160,000 in 2012, consisting largely of rental income. To arrive at that figure, the father had deducted approximately $170,000 in depreciation. The father also submitted evidence establishing that he had paid approximately $266,000 in principal on various mortgages in 2012, and that he had spent approximately $68,000 on capital improvements. Although Violet introduced testimony of an accountant questioning the reasonableness of certain discretionary expenses that the father had identified on his financial affidavit and certain repair and

maintenance expenses he had deducted for tax purposes, there was no dispute that he had made the principal payments and capital improvements.

The father argued that, to determine his gross income, the trial court was required to add the depreciation he had claimed to his taxable income, and then subtract his capital expenditures and mortgage principal payments. He asserted that this calculation would show that he lost approximately $28,000 in 2012. The mother countered that he had earned approximately $331,000 in 2012, consisting of his taxable income plus the depreciation.

The trial court found that the mother's monthly income was $8,000, and that the father's monthly income was $9,000. Although the trial court did not articulate how it arrived at these figures, it noted:

> These figures are based on the evidence produced during the hearing, along with a review of the financial affidavits filed by each party, including, but not limited to, the reported monthly expenses and those expenses which are not contained on the [father's] personal financial affidavit but which are provided as a benefit to him from another entity.

The trial court relied upon these income figures to calculate both child support and the father's obligation under the college costs provision.

The mother moved to reconsider, requesting that the trial court clarify how it had arrived at a $9,000 monthly income figure for the father, and asserting that such a figure was "not reflected anywhere in the [father's] financial documents." The father likewise moved to reconsider, asserting that the trial court erred by ignoring his "cash flow" analysis, and instead "us[ing] [his] taxable income to calculate his child support." With respect to the mother's income, the father argued that the trial court had incorrectly relied upon her financial affidavit, which had disclosed significantly less income than she had reported on her 2012 federal income tax joint return.

On appeal, the father argues that the trial court erred by not utilizing the cash flow analysis he had offered in order to determine his gross income. He argues further that the income figures found by the trial court "appear nowhere in the record" and, thus, are arbitrary. According to the father, "it is unknown and unknowable from where the court's numbers were derived."

At the outset, we note that the record does not establish that the trial court failed to apply a "cash flow" analysis; rather, it establishes only that the court rejected the analysis offered by the father. It could have, for instance, determined that the father's business expenses, or a portion of them, were unreasonable or unnecessary. See Hampers, 97 A.3d at 1121. Indeed, it

expressly determined that at least a portion of the father's personal expenses were paid for by a third party entity, thereby artificially reducing his income.

Absent a request for specific findings of fact, the trial court is ordinarily not required to make specific findings, but is presumed to have made all findings necessary to support its decree. In the Matter of Costa & Costa, 156 N.H. 323, 331 (2007). Thus, the mere failure of the trial court here to articulate how it arrived at income figures of $9,000 and $8,000 is not error. Cf. Kalil v. Town of Dummer Zoning Bd. Of Adjustment, 155 N.H. 307, 310 (2007) (observing that, because a zoning board was not required to make specific findings of fact, its failure to make such findings was not error).

However, the standard of review that we apply to the trial court's findings of fact – whether the findings could reasonably have been made on the evidence presented, Brownell, 163 N.H. at 596 – presupposes that the trial court "has made findings that provide an adequate record of [its] reasoning sufficient for a reviewing court to render meaningful review." Motorsports Holdings v. Town of Tamworth, 160 N.H. 95, 107 (2010) (discussing standards of review of a planning board decision). In this case, it is impossible to determine, based upon the complex financial information submitted by the parties, most of which was undisputed, how the trial court could reasonably have determined "that the [mother's] monthly income . . . is $8,000 and that the [father's] monthly income . . . is $9,000." Accordingly, we vacate the trial court's orders modifying child support and enforcing the college costs provision, and direct the trial court, upon remand, to calculate the parties' incomes expressly, and with sufficient detail as to how it arrived at its calculations to allow for meaningful review of its findings. Cf. Kalil, 155 N.H. at 311-12 (upholding trial court's decision to vacate zoning board decision and remand for the board to clarify its decision); In the Matter of Gordon and Gordon, 147 N.H. 693, 700 (2002) (directing trial court on remand to make specific findings to facilitate appellate review). In light of this order, we need not address the father's argument that the trial court failed to consider his income in calculating his proportional obligation under the college costs provision.

Affirmed in part; vacated in part; and remanded.

Dalianis, C.J., and Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

Eileen Fox,
Clerk

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