

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CHRISTINA CALLAHAN

Appellant

v.

JAMES CALLAHAN

Appellee

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 1394 EDA 2018

Appeal from the Order Entered April 17, 2018
In the Court of Common Pleas of Northampton County
Domestic Relations at No: DR-0005814 PACSES 758114428

BEFORE: BOWES, STABILE, and McLAUGHLIN, JJ.

MEMORANDUM BY STABILE, J.:

FILED FEBRUARY 21, 2019

Appellant, Christina Callahan ("Mother"), appeals from the April 17, 2018 support order. We affirm.

Mother commenced this action on January 14, 2014, seeking support from Appellee, James Callahan ("Father"), for the parties' child born in September of 2006. On February 21, 2014, she filed an amended complaint in which she also sought spousal support. The parties eventually reached an agreement as to spousal support and alimony, child support, child support arrears, health insurance and uncovered medical expenses. The trial court adopted the parties' agreement by order of October 29, 2014.

On September 27, 2016, Father filed a petition for modification seeking a decrease in support due to a decrease in income. The proceedings on that petition culminated in a February 14, 2018 argument before the trial court.

On April 17, 2018, based on the record and the parties' argument and briefs, the trial court entered the order on appeal. In this timely appeal, Mother raises a single issue:

Did the trial court commit an error of law and/or abuse its discretion in calculating Father's disposable income based upon federally taxed income calculated in his 2016 federal income tax return rather than actual cash flow?

Mother's Brief at 6. Specifically, Father's tax 2016 returns—one personal and one corporate for Callahan Agency, Inc., an insurance agency Father owns—reflect that he pays \$1,886.86 per month toward the repayment of a business loan. Mother argues that the trial court erred in deducting that amount from Father's monthly income for purposes of calculating his support obligation.

We conduct our review as follows:

In reviewing orders granting, denying or modifying support, this Court is limited to considering whether, based on clear and convincing evidence, the trial court abused its discretion. An abuse of discretion requires proof of more than a mere error in judgment, but rather evidence that the law was misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice, or partiality.

Since abuse of discretion allegations call for a review of the record, it is important to remember that this Court is not free to usurp the trial court's duty as the finder of fact. As this Court stated on prior occasions, [a]ppellate courts are becoming more reluctant to substitute themselves as super-support courts when they have not had the opportunity to see and hear the witnesses and so determine credibility.

Simmons v. Simmons, 723 A.2d 221, 222–23 (Pa. Super. 1998) (internal citations and quotation marks omitted).

Mother cites **Labar v. Labar**, 731 A.2d 1252, 1257 (Pa. 1999) for the proposition that cash flow, not federally taxed income, determines disposable income for purposes of calculating a support obligation. In **Labar**, the wife argued that one-half of a depreciation deduction the husband's company took in determining the amount of taxable income passed on to its shareholders. **Id.** at 1255. Our Supreme Court rejected the wife's argument, explaining that depreciation is not the equivalent of cash flow, and it does not result in income. **Id.**

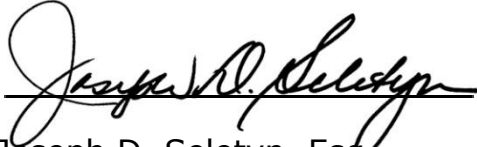
Husband and the trial court cite **Cunningham v. Cunningham**, 548 A.2d 611, 612 (Pa. Super. 1988), in which this Court wrote that deductions permitted under federal income are not automatically deducted from gross income for purposes of a support obligation. Instead, the courts will look to actual disposable income instead of the "oft-time fictional picture" that arises from tax deductions. **Id.** at 612-13. Instantly, the trial court found that each of the deductions listed on Father's 2016 tax return reflected an actual reduction in his personal income. Thus, the support order is, in fact, based on Father's actual cash flow, in accordance with applicable law. The trial court explained its findings in detail in its opinion of June 26, 2018. The record supports that conclusion.

Having reviewed the parties' briefs, the applicable law, and the record, we affirm the order based on the trial court's June 26, 2018 opinion. We direct that a copy of that opinion be filed along with this memorandum.

J-A27029-18

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/21/19