

DR20382383 117304296
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

EDP

ALLISON HORNER,

Plaintiff,

v.

WILLIAM HORNER,

Defendant.

Case No. DR20 382383

JUDGE TONYA R. JONES

MAGISTRATE'S ORDER

CIVIL RULE 75(N)(2) RULING

ORIGINAL
COURT USE ONLY

JUN 01 2021
CUYAHOGA COUNTY
CLERK OF COURTS

This matter came on for hearing on April 16, 2021 before Magistrate SHARON DITKO-BEVIONE, to whom this matter was referred by the Honorable TONYA R. JONES, Judge of the Domestic Relations Division of the Court of Common Pleas upon the Plaintiff's *Request for Oral Hearing on Temporary Support Order* (#438555), pursuant to Civ. R. 75(N)(2). Present were:

☒ ALLISON HORNER
☒ WILLIAM HORNER
☒ ROBERT A. MARCIS II

Plaintiff
Defendant
Attorney for Plaintiff

All parties were duly notified of the hearing date. The nonmoving party was allowed 14 days to respond to the motion with supporting affidavit pursuant to Civil Rule 75(N)(2).

The parties submitted the following for consideration: Health Insurance Affidavits, Income and Expense Affidavits, recent pay stubs, W-2 wage and tax statements, forms 1099, Defendant's Employment Letter from Step 2, Defendant's Severance Letter from Step 2, and Defendant's Affidavit. Said documents are maintained in the file.

The Court finds that the parties married 08/20/2011 and separated 8/14/2020. They have two minor children. The Court issued a temporary support order dated February 8, 2021 whereby Plaintiff was ordered to pay the expenses for the marital residence located at [REDACTED] Ohio. Defendant was ordered to pay half of the month payment for the Hyundai Veloster, and child support for the parties' two minor children in the amount of \$176.67 per month (\$88.33 per month per child) as child support plus \$ 20.04 per month (\$ 10.02 per month per child) as cash medical support, and \$25.00 per month toward any arrearage, for a total of \$ 221.71 per month. The Magistrate found that for purposes of temporary support Plaintiff's annual gross income was \$48,800.00 and that, though unemployed, Defendant should be imputed at \$20,000 per year. Plaintiff requested an oral hearing on the temporary support order, asserting that it should be increased.

Plaintiff argues that the original Order for Temporary Support did not take into account income information provided, and Defendant should be ordered to pay spousal support as well as a much higher amount of child support. Plaintiff asserts that Defendant's 2019 income was \$57,000 through his employment with WBC Group, and that he was earning a salary of \$88,000 per year through his employment with Step 2, when he began employment with the company in December of 2019. She

further argued that, though Defendant's employment with Step 2 was terminated in the summer of 2020, she believed he was terminated for cause and that he is therefore voluntarily underemployed.

As further support for her argument that Defendant is voluntarily underemployed, Plaintiff testified that Defendant is well-educated and capable of working in high-income fields. He has a degree in microbiology and coding, and is a data scientist as well as an licensed realtor. Despite his high potential, Defendant has paid no support since the parties August 2020 separation, and he is not working or self-employed and making very little income at this time. Plaintiff asserts that the imputation of \$20,000 per year for Defendant's income is far too low based upon his earning history and capacity.

Plaintiff presented paystubs indicating that she earns approximately \$47,000 per year through her employment with The Cleveland Clinic.

Plaintiff further argues that Defendant has no visitation with the parties two minor children, and she is responsible for 100% of their care, and the costs of providing for them. Given Defendant's earning capacity, and his demonstrated ability to earn much more than she, Plaintiff asserts that child support should be increased and Defendant should be responsible for at least 50% of the unreimbursed health care expenses.

Plaintiff also argues that the prior Order for Temporary Support required Defendant to pay only half of the payment for the car in his possession, leaving Plaintiff to pay for her entire car payment as well as half of Defendant's vehicle. She asserts that each party should be responsible for the payment related to the vehicle in their respective possession.

Defendant testified that he is a "Data Security Specialist", as well as a licensed realtor in North Carolina. He currently working to become licensed in Tennessee as well. He is currently working on building a consulting business as a Data Security Specialist. However, he asserts that he has been unable to take on clients in this business because he believes his phone has been "criminally hacked" by the Plaintiff. Because of this belief, Defendant asserts he cannot assist any clients because confidential information cannot be exchanged on an insecure and hacked phone, as he has an ethical obligation to maintain secure communications as a licensed broker.

Defendant further asserts that cyberstalking he alleges Plaintiff has been engaging in has caused him extreme distress, and is an "intentional abuse of [his] PTSD condition". He moved back to Tennessee because of this alleged behavior, because that is where he feels safe. He further alleges that he was hospitalized in a Tennessee mental health facility due to the distress that the alleged cyberstalking has caused him. He was also hospitalized in an Ohio mental health facility prior to moving to Tennessee, after Plaintiff used information she gained through the alleged cyberstalking to have him committed to the mental health facility.

Defendant testified that his parting from Step 2 was not for cause, but a mutual agreement between him and the company. As evidence he provided his severance agreement from Step 2 dated August 21, 2020 which provided, in relevant part that the separation was pursuant to the employee's resignation, and that he was to receive severance pay in the amount of \$3,384.62, which represented two weeks of his base pay. He further testified that he is currently working on building a business, but has been prevented from getting it off the ground through Plaintiff's alleged cyberstalking. He is currently making \$300 to \$400 per month, and is on track to make \$600 per month. He also asserts that Defendant has refused to give him his equipment and personal documents, which further frustrates his ability to successfully establish his company.

Defendant maintains that if he is too mentally ill to visit his children, as Plaintiff alleges, then it is "only logical that [he] is too sick to work". He further argued that since he has no visitation with the children, his parental rights and responsibilities have been removed "if not in form, then in substance". He therefore asserts that child support should be reduced to zero "in keeping with Plaintiff and Defendant's agreement on Father's rights and responsibilities being completely removed by the Court".

Defendant also asserts that he has reason to believe that one or both of the children are not his, and he is therefore contesting the paternity of both minor children. He asserts that a paternity test should be conducted before assigning any financial responsibility to him. He also asserts that he will make "formal pleas with the Honorable Judge" for this. The Court notes, however, that no formal motion for paternity testing has been filed with the Court as of the date of this order.

Finally, Defendant calls into question the amount of many expenses listed on Plaintiff's Income and Expense Affidavit, asserting that she incorrectly stated the amount she pays for life insurance premiums¹ and that the amount listed for groceries (\$1100 per month) is excessive.

With respect to Defendant's income, the Court finds that the imputation of \$20,000 in the prior Order for Temporary Support is reasonable. Despite the fact that Defendant has earned significantly more than \$20,000 per year in the past, there is credible evidence that Defendant is unable to earn at that capacity at the present time. Defendant has been hospitalized twice in the last year in mental health facilities, and testified that he is currently struggling to work and maintain clients due to these struggles. Plaintiff did not dispute that Defendant is struggling with mental health issues, and in fact testified as well that he was hospitalized shortly after the parties' separation. Given this evidence, the Court finds that it would not be appropriate to impute Defendant at a higher level of income than that in the prior Order for Temporary Support.

The Court further finds that, though Defendant asserts that he should not have any financial responsibility for the minor children until paternity is established, child support should remain as set in the prior Order for Temporary Support. No motion for paternity testing has been filed with the court, and Defendant is presumed to be the natural father of the children by reason of the parties' marriage. Moreover, though Defendant asserts that his parental rights and responsibilities have been terminated, this is not accurate. The issues of allocation of parental rights and responsibilities and parenting time are currently pending before this Court in another proceeding.

The Court does find merit to Plaintiff's argument that each party should be responsible for the payment of the vehicle in their respective possession. As such, Plaintiff shall be responsible for the payment for the Hyundai Elantra currently in her possession, and Defendant shall be responsible for the payment for the Hyundai Veloster in his possession. This order shall be effective as of February 2021, going forward.

The purpose of temporary support is to ensure that both parties are able to meet their needs and maintain a "status quo" standard of living with their current income. The Court finds that the prior Order for Temporary Support effectively allows both parties to meet their needs and maintain status quo, especially considering Defendant's reduced earning capacity at this time.

FOR GOOD CAUSE SHOWN PLAINTIFF'S REQUEST FOR ORAL HEARING ON TEMPORARY SUPPORT ORDER (#438555) IS GRANTED, in part.

¹ Plaintiff provided statements showing that the premiums for Defendant's life insurance policy is \$429.50 per month rather than the \$585 claimed on her Income and Expense Affidavit.

IT IS THEREFORE ORDERED that Defendant shall continue to pay child support and cash medical support as provided in the Order for Temporary Support, dated February 8, 2021.

IT IS FURTHER ORDERED that Plaintiff shall be responsible for the payment for the Hyundai Elantra currently in her possession, and Defendant shall be responsible for the payment for the Hyundai Veloster in his possession. This order shall be effective as of February 2021 payment, going forward.

Costs passed to final hearing.

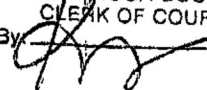
IT IS SO ORDERED.


MAGISTRATE SHARON DITKO-BEVIONE

Pursuant to Civ. R. 53(D)(2)(b), any party may file a motion with the court to set aside a Magistrate's Order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten (10) days after the Magistrate's Order is filed. The pendency of a Motion to set aside does not stay the effectiveness of the Magistrate's Order.

RECEIVED FOR FILING

JUN 07 2021

CUYAHOGA COUNTY
CLERK OF COURTS
By  Deputy

CERTIFICATE OF SERVICE

Copies of the foregoing **Magistrate's Order** were mailed by the Clerk of Court by ordinary U.S. mail to the following parties or their counsel of record:

ROBERT A. MARCIS, ATTORNEY FOR PLAINTIFF
409 KENILWORTH RD
BAY VILLAGE, OH 44140-0000

WILLIAM HORNER, DEFENDANT
2551 INDIAN TRAIL
MORRISTOWN, TN 37814-0000

Copies were mailed by the Clerk of Court on 6-1-21.

W. F.
DEPUTY CLERK OF COURT