

NOTICE: THIS IS AN UNPUBLISHED OPINION.

Appeals Court of Massachusetts.  
MARYANNE R.,<sup>FN1</sup>

FN1. A pseudonym.

v.  
MASON M.<sup>FN2</sup>

FN2. A pseudonym.

No. 05-P-117.  
April 21, 2006.

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

**\*1** Maryanne R. (mother) and Mason M. (father) had a nonmarital child while the father was, and continues to be, married to another woman (wife). The father has two marital children, one older and one younger than the nonmarital child. In 2000, pursuant to a complaint to establish paternity filed, on behalf of the mother, by the Department of Revenue (department), the father was adjudicated the biological father of the nonmarital child. He was ordered to pay child support in the amount of \$272.60 a week. In February, 2001, the department <sup>FN3</sup> on behalf of the mother, filed a complaint for modification because the father's wife, who was on maternity leave at the time of the trial, had returned to work and was earning approximately \$95,000 a year. That complaint was dismissed, but the Supreme Judicial Court vacated the dismissal and the first child support order and remanded the matter for further proceedings in accordance with its opinion. *Department of Revenue v. Mason M.*, 439 Mass. 665 (2003).

FN3. The Department of Revenue is not a party to this appeal.

By the time of the second trial, pursuant to the remand, the father's second marital child had been diagnosed with various ailments requiring the father to reduce his work schedule in order to be home and care for the child more often. <sup>FN4</sup> This situation resulted in a reduction in the father's income, and he filed a counterclaim to reduce his child support obligations. The Probate Court first dealt with the original child support order that was remanded by the Supreme Judicial Court and increased the father's payments to the mother from \$272.60 a week to \$389.42 a week <sup>FN5</sup> for the period between the entry of the initial judgment and the filing by the department of the complaint for modification. The Probate Court then analyzed the modification complaint and ordered payments of \$484.42 a week from the filing of the department's modification complaint to the date of the father's counterclaim for modification. <sup>FN6</sup> See *G.L. c. 208, § 28*; Massachusetts Child Support Guidelines (guidelines). The judge then considered the father's counterclaim based on a reduction in income (due to his reduction in hours) and reduced the weekly amount prospectively from \$484.42 to \$284.50. The mother appeals only this last portion of the judgment.

FN4. The trial judge found, and the mother does not now dispute, that the father's reduction in hours was a bona fide response to the needs of his second marital child.

FN5. \$389.42 is the amount indicated by the Trial Court's "Child Support Guidelines" (February, 2002) promulgated under G.L. c. 208, § 28 (guidelines), for an income of \$75,000.

FN6. The judge started with the maximum support set forth in the guidelines, then added fifteen percent of the father's income in excess of \$75,000.

The guidelines provide a formula, based upon the income of the noncustodial parent and certain other expenses, to determine the amount of weekly payments for each affected child. The formula applies to the first \$75,000 of the noncustodial parent's income. The consideration of income in excess of \$75,000 is left by the guidelines to the discretion of the trial judge. Child Support Guidelines II(C).

The ruling in *Mason M.*, *supra*, held that the Probate Court judge's decision on the department's original complaint and on the complaint for modification was error because it set aside the father's excess income for the care of his marital children, while ignoring the wife's ability to contribute to the care of the marital children, and at the same time making deductions from the father's support obligation based on the cost of caring for the marital children. The court ruled this particular situation was tantamount to an impermissible favoring of the marital children in the allocation of income. *Id.* at 672. Accordingly, the Supreme Judicial Court ordered that the Probate judge require support payments of *at least* the maximum amount provided by the guidelines formula, "and ... consider the question of an additional sum based on [the nonmarital child's] needs and the father's ability to pay more..." *Id.* at 677.

\*2 The new support order of the Probate Court <sup>FN7</sup> represents the weekly amount required by the guidelines formula, less a deduction of \$42 for the cost incurred by the father in providing health insurance to the nonmarital child. The mother claims that this order is error. The mother first argues that despite the decline in the father's income to under \$75,000, the high standard of living enjoyed by the marital children suggests that the father has access to more funds, which he should be required to share with the mother so as to bring the nonmarital child's standard of living more in line with that of the marital children. Next, she argues that even if the probate judge was correct in rigidly applying the guidelines formula, it was error under the guidelines to make a deduction for the cost of the nonmarital child's health insurance.

FN7. We refer only to the ongoing support requirement, not the higher weekly payments the father was ordered to make for certain closed periods, which the mother does not challenge.

I. The essence of the mother's first argument is that it is unfair that the father, his wife, and his marital children should live so well while the mother and her nonmarital child live in or near poverty. While G.L. c. 208, § 28, does indicate that the presumption, that the amount required by the guidelines is appropriate, can be overcome, the mother cites no specific authority for the notion that child support payments resulting in a disparity between the lifestyles of marital and nonmarital children requires a departure from the guidelines.

The mother cites *Mason M.* for the proposition that "to treat [the nonmarital child] in a manner that was grossly inferior to the treatment of the two marital children ... was contrary to the fundamental social policies set forth in the guidelines." Mother's Brief at p. 6, quoting *Mason M.*, 439 Mass. at 679. However, the unfairness that was corrected in that case concerned the father's earnings *in excess of the guidelines' maximum amount*

(\$75,000); coupled with a support order that actually lowered the father's support obligation to an amount less than the presumptive minimum.

The mother argues that the purpose of the guidelines and the duty of the Probate Court is to require, in every case, that equal (or roughly equal) sums be devoted to the care of each of the father's children. In fact, such a scheme would obviate the guidelines formula entirely. We read *Mason M.* as applying only to income in excess of the guidelines' maximum and in the circumstances presented by that case. The cases cited by the mother to support her argument are not to the contrary, as they all involve noncustodial parents whose income exceeded the guidelines maximum. See *Schuler v. Schuler*, 382 Mass. 366 (1981); *Brooks v. Piela*, 61 Mass.App.Ct. 731 (2004). We further read *Mason M.* as requiring the Probate Court to consider a noncustodial parent's spouse's income only insofar as that income may relieve the noncustodial parent of the burden of caring for his marital children and thus make more of his income subject to a child support order. Any further consideration of the father's wife's income or her expenditures on the marital children would be highly inequitable, as it would effectively force her to subsidize the care of a child not her own.

**\*3** The mother also suggests that the father's decision to reduce his hours to care for his second marital child was tantamount to an unfair reallocation of resources from the nonmarital child to the marital children (because instead of converting his time and labor into income, which can be reached by the Probate Court, he is giving time and labor directly to his marital child). The mother cites no authority for the proposition that time spent caring for marital children at the expense of greater income is equivalent to the value of the lost income. The Probate judge made the following findings concerning the father's decision.

"[T]he Father and the Wife, after being unable to find[ ] suitable childcare, reached the decision that due to their child's medical needs and potentially life threatening condition, they would reduce their work schedules to avoid placing him a child care center... I find that the Father's reduction in his work hours and accompanying reduction in income was made voluntarily and that it was made in good faith. As I have found that the Father had good reason to reduce his work hours to care for his child with a serious medical condition, I decline to attribute income to the Father." <sup>FN8</sup>

FN8. The Probate Court findings indicate that this is not a case where the noncustodial parent structured his work arrangements with his spouse for the particular purpose of reducing child support payments to a nonmarital child. Such structuring would substantially diminish the equitable concerns, discussed *supra*, involved in requiring the wife to pay for the care of a child not her own.

The mother has not demonstrated that these findings are clearly erroneous and we have determined that they are supported by the record. The record reflects that the mutual decision of the father and the wife that the father should be the one to reduce his work hours was based, at least in part, on rational economic considerations. The wife's income, on a full time basis, exceeded the father's income, on a full time basis. According to the judge's findings, the father and the wife, therefore, having made the decision that the child needed full time care by his parents, made the further decision that the father should be the one to reduce his hours reflecting a reduction in salary and the mother would change her hours, but not reduce her salary, to coordinate care for the child. The judge also found that these were legitimate decisions because they could not otherwise find adequate child care to address their child's health problems. We defer to this finding. See *Bush v. Bush*, 402 Mass. 406, 411 (1988); *Coppinger v. Coppinger*, 57 Mass.App.Ct. 709, 713 (2003).

II. The mother correctly argues, however, that the father should not have been given credit for the cost of providing health insurance to the nonmarital child. Where, as here, a non-custodial parent is ordered to obtain health insurance for a child, the guidelines permit a deduction for the cost of that insurance. Child Support Guidelines II(G)(1).

However, the deduction is not allowed where the child can be added to an existing family insurance plan at no additional cost. *Ibid.* Although that appears to be the case here, the Probate judge deducted half of the father's health insurance costs from the support obligation (reducing the obligation from \$324.50, as required by the guidelines formula, to \$284.50 <sup>FN9</sup>). The father essentially concedes that he did not incur additional costs in order to insure the nonmarital child, arguing only that since the Probate judge didn't give a detailed explanation of his calculations, it's *possible* that there was no error and that the judge arrived at his final support order in some other way. This argument is insufficient to overcome the burden of proving entitlement to a deduction for healthcare costs, which the guidelines place upon the noncustodial parent. See Child Support Guidelines II(G)(1). It was error to deduct half the cost of health insurance from the father's support obligation.

FN9. The judge's calculations appear to be off by a few dollars.

**\*4** In light of the foregoing, so much of the judgment that orders the father to pay child support commencing October 1, 2003, is vacated and the case is remanded for entry of a new order, commencing as of October 1, 2003, that applies the guidelines formula to the father's income without deductions of any kind.

*So ordered.*

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Maryanne R. v. Mason R.

66 Mass.App.Ct. 1103, 845 N.E.2d 1223 (Table), 2006 WL 1061964 (Mass.App.Ct.)

Unpublished Disposition

• 2005-P-0117 (Docket) (Jan. 25, 2005)

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