

DISTRICT OF COLUMBIA COURT OF APPEALS

Mazza v. Hollis

947 A.2d 1177 (D.C. 2008) · No. 05-FM-1574 · Decided May 15, 2008

SUMMARY

The District of Columbia Court of Appeals held that a Georgia divorce decree incorporating and approving the parties’ child support agreement constituted an order subject to modification under District of Columbia law. The court rejected application of the more restrictive Cooper standard and remanded for consideration of modification under the Child Support Guideline, also vacating a related increase in the support obligation.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Farrell, Associate Judge; Blackburne-Rigsby, Associate Judge; Nebeker, Senior Judge
JURISDICTION	District of Columbia
DECIDED	May 15, 2008
DOCKET	05-FM-1574
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the Superior Court of the District of Columbia's denial of a request to modify child support and its order increasing the appellant's support obligation.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Joseph R. Mazza v. Valerie B. Hollis

TOPICS

- child support
- statutory interpretation
- family law procedure
- appellate procedure
- legislative intent

PRACTICE AREAS

- family law
- child support
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether District of Columbia child-support statutes permit modification of a child-support obligation contained in a settlement agreement that was incorporated into and became part of a Georgia divorce court's judgment.
2. Whether the restrictive modification standard from *Cooper v. Cooper* governs modification of the incorporated Georgia child-support order.
3. Whether the Superior Court's order denying modification and increasing support should be vacated pending application of the District's child-support guideline.

HOLDINGS

1. A child-support agreement incorporated into and approved as part of a Georgia divorce decree is an order of a court within the meaning of D.C. Code §§ 46-204(a) and 16-916.01(a), and therefore may be modified under those provisions.
2. The restrictive *Cooper* standard does not govern modification of a child-support provision that has been merged into, or otherwise adopted as, the court's own order; instead, modification is governed by the District's child-support statutes and guideline.

KEY QUOTATIONS

“This appeal presents a very narrow question: Do the quoted provisions permit modification in accordance with their terms of a child support agreement (1) reached by the parties in the state of Georgia before divorcing there and (2) which by Georgia law became part of the judgment or “order” of the court granting the divorce. We answer that question “yes,”” (947 A.2d at 1178)

“We conclude that the Georgia divorce decree incorporating and approving the parties' child support agreement was an order within the meaning of District law, thus permitting a change in Mazza's obligation if warranted by the Child Support Guideline.” (947 A.2d at 1180)

FACTUAL BACKGROUND

Mazza and Hollis married in 1991, had a child in 1997, separated in 1999, and divorced in Georgia later that year. Before the divorce, they entered into a Georgia settlement agreement addressing custody and child support, and the agreement was incorporated into the Georgia divorce decree. After both parties relocated to the Washington, D.C., metropolitan area and the decree was registered in the District, Mazza sought to reduce his support obligation, alleging changed circumstances including the child's living with him 40% of the time and Hollis's increased earning potential.

PROCEDURAL HISTORY

The parties' Georgia divorce decree, incorporating their child-support settlement agreement, was registered in the District of Columbia Superior Court in 2001. Mazza moved in 2004 to modify custody and reduce child support based on a substantial and material change in circumstances. The trial judge ultimately applied the restrictive *Cooper* standard, denied the reduction, and ordered a modest increase in support under the agreement. The District of Columbia Court of Appeals vacated both orders and remanded for consideration under the District's child-support statutes and guideline.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the order denying Mazza's request to modify child support and the order increasing his support obligation. Remand for consideration of Mazza's modification request in accordance with D.C. Code § 46-204(a) and the Child Support Guideline, with further consideration of Hollis's requested increase because its disposition may depend on the modification decision.

CASES CITED

- Cooper v. Cooper, 472 A.2d 878 (D.C. 1984)
- Duffy v. Duffy, 881 A.2d 630, 638-39 (D.C. 2005)
- Hamel v. Hamel, 539 A.2d 195, 199 (D.C. 1988)
- Clark v. Clark, 638 A.2d 667, 670 & n.6 (D.C. 1994)
- Bridges v. Bridges, 256 Ga. 348, 349 S.E.2d 172, 174 (1986)
- Pannell v. Pannell, 162 Ga. App. 96, 290 S.E.2d 184, 185 (1982)
- Moccia v. Moccia, 277 Ga. 571, 592 S.E.2d 664, 665 (2004)
- Gowins v. Gary, 288 Ga. App. 409, 654 S.E.2d 162 (2007)
- Ali v. Federal Bureau of Prisons, 552 U.S. 214, 128 S. Ct. 831, 835-36, 169 L. Ed. 2d 680 (2008)
- Nevarez v. Nevarez, 626 A.2d 867, 871 (D.C. 1993)
- Prisco v. Stroup, 947 A.2d 455, 458 (D.C. 2008)

OPINION

FARRELL, J.

947 A.2d 1177 (2008) Joseph R. MAZZA, Appellant, v. Valerie B. HOLLIS, Appellee. No. 05-FM-1574. District of Columbia Court of Appeals. Argued April 22, 2008. Decided May 15, 2008. *1178 Edouard J.P. Bouquet for appellant. Robin A. Clark, with whom Eric M. Glass was on the brief, for appellee.

Before FARRELL and BLACKBURNE-RIGSBY, Associate Judges, and NEBEKER, Senior Judge. FARRELL, Associate Judge: D.C.Code § 46-204(a) (2007) provides, in relevant part, that "[a]ny order requiring payment of an amount of child support... may be modified upon a showing that there has been a substantial and material change in the needs of the child or the ability of the responsible relative to pay since the day on which the order was issued." [1] Similarly, D.C.Code § 16-916.01(a) (2007), part of the District's Child Support Guideline, provides that "in any case that seeks to modify an existing support order, if the judicial officer finds that there is an existing duty of child support, the judicial officer shall conduct a hearing on child support, make a finding, and

enter a judgment in accordance with the child support guideline." [2] This appeal presents a very narrow question: Do the quoted provisions permit modification in accordance with their terms of a child support agreement (1) reached by the parties in the state of Georgia before divorcing there and (2) which by Georgia law became part of the judgment or "order" of the court granting the divorce.

We answer that question "yes," and accordingly reverse the order of the Superior Court declining to modify child support and remand for consideration of the request to modify in accordance with the Child Support Guideline.

I. Appellant Joseph Mazza and appellee Valerie Hollis were married in Virginia in 1991 and had one child born in 1997. They *1179 separated in 1999 and were divorced later that year in Georgia. Before the divorce, they had entered into a Settlement Agreement in Georgia (the Agreement) dealing with, among other things, custody and support of the child.

In August 1999, Hollis moved to Washington, D.C. with the child. Three months later, Mazza also relocated to the Washington, D.C. metropolitan area. In 2001 the Georgia divorce decree was registered in the Superior Court of the District of Columbia.

On July 1, 2004, Mazza filed a Motion to Modify Custody and Child Support in the Superior Court, seeking a reduction in the amount of his monthly support obligation because of a "substantial and material change in circumstances." [3] Hollis opposed the motion, relying on this court's decision in *Cooper v. Cooper*, 472 A.2d 878 (D.C.1984), and in moving for summary judgment she also asked for an increase in Mazza's monthly child support obligation under the terms of the Agreement.

The trial judge initially denied Hollis's motion for summary judgment, reasoning that D.C.Code §§ 46-204(a) and 16-916.01(a), rather than *Cooper*, established the legal standard for modification of Mazza's child support obligation.

After an evidentiary hearing, however, the judge changed his mind, ruled that the *Cooper* standard governed, and found that Mazza had not made the restrictive showing that *Cooper* requires for a reduction in child support.

The judge simultaneously ordered a modest increase in Mazza's support obligation in accordance with the terms of the Agreement. On appeal, Mazza challenges both the denial of his request for a reduction of the child support amount and the increase in his obligation which the judge ordered.

II.

Under our decision in *Cooper*, a child support provision of a separation agreement that has been incorporated, but not merged, into an order of divorce gives the trial court only "limited authority" to modify the agreed child support. *Duffy v. Duffy*, 881 A.2d 630, 638 (D.C. 2005). [4] We agree

with the trial judge's determination, on the record before him, that Mazza did not meet the Cooper test for reducing the amount of child support the parties had agreed upon in 1999.

But that conclusion does not decide this case. For, unlike in the situation Cooper dealt with, if "a settlement agreement is merged into the trial court's order [of divorce],... the binding force of the amount of child support is... based on the... authority of the court's order," Duffy, 881 A.2d at 639; in that situation, the parties' agreement has been "adopted by the court as its own determination of the proper disposition...."

Hamel v. Hamel, 539 A.2d 195, 199 (D.C.1988). And, when that is so, "the principles embodied in the Child Support Guideline [and § 46-204(a)] apply [to a modification request] rather than the requirement[s] set forth in Cooper." Clark v. Clark, 638 A.2d 667, 670 (D.C.1994) (footnote omitted); see Duffy, 881 A.2d at 639 ("[T]he court [then] has discretion to modify its own *1180 order based on a showing by either party of a material change in the circumstances of either the child or the parents.") (citation omitted).

Examination of Georgia law demonstrates that when Mazza and Hollis became divorced there, their existing child support agreement was effectively "adopted by the [divorce] court as its own determination of the proper disposition" of child support. Hamel, 539 A.2d at 199.

Under Georgia law, "[i]n a divorce action, the [settlement] agreement, if accepted by the court, becomes the judgment of the court itself and... the court has the discretion to approve or reject the agreement, in whole or in part." Bridges v. Bridges, 256 Ga. 348, 349 S.E.2d 172, 174 (1986); see also Pannell v. Pannell, 162 Ga.App. 96, 290 S.E.2d 184, 185 (1982) ("agreements between husband and wife... are, by presumption of law, merged in the final verdict of the jury in the divorce suit" (quotation marks omitted); "[u]nderstandings... not incorporated into the divorce decree are not binding").

Georgia, in other words, does not recognize the distinction between merger and incorporation embodied in the Cooper limitation; at least where child support is concerned, an agreement accepted by the divorce court may be modified in accordance with the support guidelines contained in Georgia law. See, e.g., Moccia v. Moccia, 277 Ga. 571, 592 S.E.2d 664, 665 (2004); Gowins v. Gary, 288 Ga.App.

409, 654 S.E.2d 162 (2007). The parties here do not dispute that the Agreement was incorporated in their divorce decree, hence that the child support provision was accepted by the court and became "the judgment of the court itself." Bridges, *supra*. It therefore was an "order" of the court within the meaning of §§ 46-204(a) and 16-916.01(a), and subject to modification in accordance with those statutes.

That would not be true if the term "order" under these provisions refers only to orders of the Superior Court, but Hollis has not made that argument, and we see no basis in the statutes for that

limitation. Section 46-201(15B) defines a "support order" as "a judgment, decree, or order... issued by a court or an administrative agency of competent jurisdiction... for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state" (emphasis added) clear indications that the legislature meant no limitation that would exclude an order of a Georgia court.

Moreover, the word "any," as in "[a]ny order," § 46-204(a), "read naturally... has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali v. Federal Bureau of Prisons*, ___ U.S. ___, ___-___, 128 S. Ct. 831, 835-36, 169 L. Ed. 2d 680 (2008) (citations omitted).

We conclude that the Georgia divorce decree incorporating and approving the parties' child support agreement was an order within the meaning of District law, thus permitting a change in Mazza's obligation if warranted by the Child Support Guideline. This conclusion makes it unnecessary for us to answer the question left open as well in *Clark*, 638 A.2d at 670 n. 6, and *Nevarez v. Nevarez*, 626 A.2d 867, 871 (D.C.1993), of whether §§ 46-204(a) and 16-916.01(a) legislatively overruled our *Cooper* decision.

Nor need we consider the retroactive application to the parties' conduct in 1999 of D.C.Code § 16-916.01(t), a later Guideline amendment enacted in 2002 that by its terms appears to overrule *Cooper*.^[5] Finally, *1181 District of Columbia law envisions generally that a child support order issued by a tribunal of another state will be registered in the District pursuant to D.C.Code §§ 46-301 et seq.

(2001) in order to be subject to modification. See § 46-306.11; *Prisco v. Stroup*, 947 A.2d 455, 458 (D.C. 2008). The parties' divorce decree was registered with the Superior Court in 2001, and because no argument has been made that this did not do service under the registration statute, we do not consider the point further.

Accordingly, we vacate the order of the trial court and remand for consideration of Mazza's request for modification in accordance with § 46-204(a) and the Child Support Guideline. Further, because decision on Mazza's request necessarily will affect any entitlement of Hollis to an increase in child support as provided in the Agreement, we vacate as well the order increasing Mazza's support obligation and require further consideration of that issue too.

So ordered. NOTES [1] Section 46-204(a) recodified, without material change, former § 30-504(a) enacted in 1987. [2] Section 16-916.01(a) recodified, without material change, former § 16-916.1(a) enacted in 1990. The Guideline, in keeping with § 46-204(a), provides that "a parent [may] seek a modification of a support order upon a showing of a material and substantial change in the needs of the child or the ability of the parent with a legal duty to pay support to pay."

D.C.Code § 16-916.01(r)(4)(C). [3] He asserted, in particular, that the child now lived with him 40% of the time, and that Hollis had since become a lawyer, thus increasing her earning potential. [4] The Cooper standard allowed modification only upon a showing (1) of "a change in circumstances which was unforeseen at the time the agreement was entered and (2) that the change is both substantial and material to the welfare and best interests of the children."

Cooper, 472 A.2d at 880 (citations omitted). "[A] change in the parents' financial circumstances alone cannot provide the basis for modifying a contract between the parties." Id. at 881 (citation and internal quotation marks omitted). But see note 5, *infra*.

[5] That provision allows modification of a child support provision "[u]pon the occurrence of a substantial and material change in circumstances sufficient to warrant the modification... without regard to whether the agreement or settlement is entered as a consent order or is incorporated or merged in a court order" (emphasis added).

The legislative history confirms that § 16-916.01(t) was intended to "overturn[] the decision of the D.C. Court of Appeals in Cooper...." KATHY PATTERSON, CHAIRPERSON, COMMITTEE ON THE JUDICIARY, REPORT ON BILL 14-635, THE "DOMESTIC RELATIONS LAWS CLARIFICATION ACT OF 2002," at 4 (May 29, 2002).

In Duffy, *supra*, the court had no occasion to consider the effect of § 16-916.01(t) on the continued vitality of the Cooper limitation.