

SUPREME COURT OF NEW HAMPSHIRE

In re Rohdenburg

149 N.H. 276 (2003) · Decided March 17, 2003

SUMMARY

The New Hampshire Supreme Court reviewed a child support modification order that increased the respondent's obligation without addressing his request for a downward modification. The court held that the marital master committed clear legal error by accepting the petitioner's incomplete financial affidavit and by failing to make required findings concerning the economic consequences of the petitioner's remarriage. The judgment was reversed and remanded.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Brock, C.J.; Broderick, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	March 17, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a superior court order approving a marital master's recommendation that increased the respondent's child support obligation.
STANDARD OF REVIEW	Because the respondent failed to provide a transcript of the contested hearing, the court presumed that the master's findings were supported by the record and limited review to whether the master committed a clear error of law.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Brad D. Rohdenburg v. Jennie A. Louzan

TOPICS

- child support
- family law procedure
- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

- Family law
- Child support
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the marital master committed clear error by accepting and relying on the petitioner's incomplete financial affidavit in a child-support modification proceeding.
2. Whether the marital master erred by failing to address the respondent's request for a downward modification based on a substantial change in the parties' economic circumstances following the petitioner's remarriage.

HOLDINGS

1. Superior Court Rule 197 mandates full disclosure in every section of the financial affidavit at a hearing to modify child support, and the marital master committed clear error by accepting and relying on the petitioner's incomplete affidavit.
2. The master committed legal error by failing to make written findings addressing the respondent's claim that the parties' economic circumstances had substantially changed after the petitioner's remarriage.

KEY QUOTATIONS

“Each party has a duty to complete all sections of the Rule 197 financial affidavit to the best of his or her ability.” (149 N.H. at 279)

“The duty of full disclosure is mandatory and cannot be waived by either of the parties or by the court.” (149 N.H. at 279)

“When determining if there has been a substantial change of circumstances at a modification hearing, remarriage and consequential duties of support to step-children are factors that must be considered, although they may not be dispositive of the issue.” (149 N.H. at 280)

FACTUAL BACKGROUND

The petitioner sought modification of child support under RSA 458-C:7 based on the three-year modification provision and did not allege a change in circumstances. The respondent requested a downward modification based on substantial changes in the parties' economic circumstances following the petitioner's remarriage. The petitioner filed a financial affidavit that omitted information about assets, property interests, and related debt, although it listed mortgage and vehicle expenses; the master nevertheless increased the respondent's support obligation under the guidelines and failed to address his downward-modification request.

PROCEDURAL HISTORY

Louzan moved in superior court to modify child support and for contempt. After a contested hearing based on offers of proof, the marital master denied contempt but increased Rohdenburg's monthly support obligation from \$3,300 to \$3,800 and did not address his request for a downward modification based on changed circumstances after Louzan's remarriage. The superior court approved the master's recommendation, and Rohdenburg appealed.

DISPOSITION

REMAND INSTRUCTIONS

On remand, the master must obtain complete financial disclosures under Superior Court Rule 197, consider all relevant evidence concerning the ability of all persons owing a duty to support the children, and make written findings addressing the respondent's requested downward modification and the statutory special-circumstances factors.

CASES CITED

- Giles v. Giles, 136 N.H. 540, 544 (1992)
- Cote v. Cote, 123 N.H. 376, 377-78 (1983)
- DePalantino v. DePalantino, 139 N.H. 522, 525 (1995)
- Shafmaster v. Shafmaster, 138 N.H. 460, 467 (1994)
- Logan v. Logan, 120 N.H. 839, 842-43 (1980)

OPINION

In re Rohdenburg 149 N.H. 276

NADEAU, J.

Nadeau, J. The respondent, Brad D. Rohdenburg, appeals a recommendation of the Marital Master (Martha W. Copithorne, Esq.), approved by the Superior Court (Perkins, J.), increasing his child support obligation. On appeal, the respondent argues that the master erred by accepting an incomplete financial affidavit from the petitioner, Jennie A. Louzan, contrary to Superior Court Rule 197 and by failing to address his request to decrease his support obligation based upon a substantial change in circumstances. We reverse and remand. The following facts are relevant to our decision. In March 2002, the petitioner moved for modification of child support and contempt in the superior court. The respondent objected, and the marital master held a contested hearing based upon offers of proof by the parties. No record of this hearing is available. The parties' pleadings, financial affidavits, child support worksheets and proposed orders are the only documents available for us to review. The petitioner's original motion requested the court to recalculate the respondent's child support obligation under the child support guidelines pursuant to RSA 458-C:7 (Supp. 2002), which permits either party to request modification three years after the entry of a support order without the need to show a substantial change in circumstances. The petitioner's motion alleged no change of circumstances. The respondent's objection asserted that if his support obligation was modified, it should be modified downward to reflect substantial changes in the parties' economic circumstances since the petitioner had remarried. Prior to the hearing, each party submitted a financial affidavit pursuant to Superior Court Rule 197. The petitioner's affidavit did not include any information in sections seven and eight relating to assets, property interests and related debt. The petitioner's affidavit did include monthly expenses for

mortgage and vehicle payments, however, even though it listed no real property or motor vehicles in sections seven or eight. After the hearing, the master denied the petitioner's motion for contempt but increased the respondent's support obligation from \$3,300 per month to \$3,800 per month based upon the court's calculation of child support under the statutory guidelines. See RSA 458-C:3 (Supp. 2002). The master did not address the respondent's request to decrease his child support obligation. This appeal followed. The respondent alleges no error in the master's calculation of his support obligation under the child support guidelines, and we presume the calculation is correct based upon the parties' current income. See *Giles v. Giles*, 136 N.H. 540, 544 (1992); RSA 458-C:4, II (1992). Rather, the respondent argues the master erred by accepting the petitioner's incomplete financial affidavit contrary to Superior Court Rule 197, and *278 then by basing its support order upon that incomplete affidavit. The respondent also argues the master erred by failing to address his request for a downward modification based upon a substantial change in circumstances due to the petitioner's improved financial circumstances after remarriage. See RSA 458-C:5 (Supp. 2002). The respondent did not provide a transcript of the contested hearing. Therefore, we presume the master's findings are supported in the record and our review is limited to whether the master committed a clear error of law. See *Cote v. Cote*, 123 N.H. 376, 377-78 (1983). Superior Court Rule 197 requires each party to file a financial affidavit at every marital hearing involving financial matters or property, including post-divorce child support modification hearings. The Rule 197 financial affidavit requires full disclosure of assets, expenses and income. Each party has a duty to complete all sections of the Rule 197 financial affidavit to the best of his or her ability. See *DePalantino v. DePalantino*, 139 N.H. 522, 525 (1995) (decided under former Superior Court Rule 158). The duty of full disclosure is mandatory and cannot be waived by either of the parties or by the court. See *Shafmaster v. Shafmaster*, 138 N.H. 460, 467 (1994) (decided under former Superior Court Rule 158). Furthermore, both parties must attest to the completeness of their financial disclosures on the affidavit under oath, subject to the pains and penalties of perjury. See *id.* While our prior cases addressing the disclosure requirements of Superior Court Rule 197 (formerly Rule 158) arose from requests for modification of property settlements, which generally are not modifiable, see, e.g., *id.* at 462, we have never so limited our holdings and we decline to do so now. The instructions for the Rule 197 financial affidavit clearly state: When this form is needed - You must fill out and file this form with the court: If you are the husband or wife in a divorce or legal separation case. If you are the mother or father in an after-divorce, custody, child support, or paternity case. If either side is requesting child support or alimony or a change in an existing support or alimony order. If a person's ability to pay an obligation is an issue. Any other time that a Court may require.

*279(Emphasis added.) This instruction carries out the requirements of Rule 197, which mandate that the form be completed and filed "[a]t every hearing involving financial matters or property, or as may be required by the court."

Likewise, the instructions for the financial affidavit provide the following directions for the full

disclosure of assets required by sections seven and eight of the affidavit: 7/8. Asset Information - You must list all of your assets in these sections. In section 7, the first column is for your good-faith estimate of the total fair market value of assets in each category [including]____Motor Vehicles ... Investments ... Life Insurance ... Pension ... Retirement Account... You must list all assets. Assets include, but are not limited to, the following: Any asset in which you have an interest, but that is being held in the name of someone else.... Any assets that are owned partly by you and partly by someone else, such as a jointly owned bank account, motorcycle, or piece of real estate. Therefore, because the requirement of full disclosure under Superior Court Rule 197 is mandatory for all sections of a financial affidavit and the financial affidavit must be filed at a hearing to modify a child support obligation, we hold that the master committed a clear error of law by accepting the petitioner's incomplete financial affidavit. While marital masters are granted broad discretion in matters relating to child support determinations, see *Giles*, 136 N.H. at 544, they must have all information relevant to that determination before exercising that discretion, see *Logan v. Logan*, 120 N.H. 839, 843 (1980). We hold, additionally, that the master committed an error of law by failing to address the respondent's request to reduce his support obligation based upon a substantial change in the parties' respective economic circumstances since the petitioner's remarriage. See RSA 458-C:5. The statute mandates that: I. Special circumstances, ... if raised by any party to the action or by the court, shall be considered and may result in adjustments in the application of support guidelines provided under this chapter. The court shall make unitten findings relative to the applicability of the following: *280c) The economic consequences of the presence of stepparents, step-children or natural or adopted children---- RSA 458-C:5, I (c) (emphasis added). Because the respondent raised the issue in his response to the petitioner's original motion, the master erred by failing to make written findings relative to its applicability. When determining if there has been a substantial change of circumstances at a modification hearing, remarriage and consequential duties of support to step-children are factors that must be considered, although they may not be dispositive of the issue. See *Logan*, 120 N.H. at 842-43. On remand, the master "should consider all relevant evidence with regard to the ability of all persons owing a duty to support the ... children." *Id.* at 843. This includes "all of the assets and income of all parties," *id.* (quotation and brackets omitted), which must be disclosed on the financial affidavit pursuant to Superior Court Rule 197. Reversed and remanded. Brock, C.J., and Broderick, Dalianis and Duggan, JJ., concurred.