Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-557

AUGUST TERM, 2005

Lee B. Denizot	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Family Court
	}	
Michel Denizot	}	
	}	DOCKET NO. 353-10-96 Frdm
		Trial Judge: James Crucitti

In the above-entitled cause, the Clerk will enter:

Mother appeals pro se from a family court order granting father=s requests for wage withholding and to allocate the separate amounts paid for child and spousal support under a nonallocated support award in the parties= 1997 divorce decree. We affirm.

The parties were divorced in 1997. They had two children. The final order incorporated a stipulation providing that father would pay to mother Aas spousal and child support . . . on the 1st and 15th of each month through automatic electronic transfer of funds the following:@ 43% of his gross income from July 1, 1997 to July 1, 2001; 36.4% of his gross income from July 1, 2001 to July 1, 2006; and 27.9% of his gross income from July 2006 to July 2009. and 21.4% of his gross income from July 1, 2009 to July 1, 2012. The provision failed to allocate separate amounts for child and spousal support, other than to state that after the younger child graduates from high school (in approximately 2009) the entire amount is to be considered spousal support. To that end, the provision indicated that father would pay to mother 21.4% of his gross income from July 1, 2009 to July 1, 2012 Aas spousal support . . . on the 1st and 15th of each month through automatic electronic transfer of funds.@

On June 11, 2004, father filed a motion to modify child support, to allocate the separate amounts paid for child and spousal support, and to withhold the monthly support payment from his wages. The motion noted that the parties= oldest child had turned eighteen in 2003, argued that the allocation of separate amounts for spousal and child support was necessary for tax and other purposes, and asserted that electronic transfer (the method the parties had apparently been using) had been problematic and unworkable. A hearing before the family court magistrate was held on July 29, 2004. Father was represented by counsel. Mother appeared pro se. At the hearing, the magistrate granted the request to withhold the support payment from father=s wages through the Office of Child Support. The magistrate also agreed on the necessity to allocate separate amounts for spousal and child support. See Gulian v. Gulian, 173 Vt. 157, 161 (2001) (noting that combining maintenance and child support improperly renders the awards unreviewable). The magistrate explored various allocation methods with the parties and ultimately decided to subtract the amount of support that would be owing under the child support guidelines from 36.4% of father=s gross monthly income[*] (the amount of child and spousal support set forth in the final order) to arrive at the maintenance amount. The court further ordered that the amount to be withheld would be based on father=s gross income on July 1, 2005, as determined from his income tax returns of the prior year, and would be revised thereafter every July 1st until the termination of father=s support obligation. The magistrate directed father=s counsel to prepare an order reflecting the decision. The order calculated that father=s gross monthly income was $6244, that his total support obligation under the decree (36.4% of $6244) was $2272.82, that the child support obligation was $860, and that his alimony obligation was therefore $1412.82 ($2272.82 minus $860). The magistrate noted that mother=s and father=s total monthly income after taxes and expenses was roughly equal.

Mother appealed the magistrate=s decision to the family court. The court issued a written decision in November 2004, affirming the magistrate=s decision. This appeal followed.

Carefully parsed, mother=s appeal appears to raise several separate claims. First, she contends the magistrate erred by denying a request to continue the hearing. The motion does not appear in the record, but the docket entries show a request on June 29, 2004, for a two month extension of the hearing scheduled for July 29, and an order dated July 9, denying the motion with the entry: APlaintiff has had and still has ample time to find counsel.@ Mother contends that she was denied the right to effective representation by the magistrate=s order. A litigant is not entitled to limitless time to obtain counsel, however, and the record shows that mother had more than one and a half months to obtain counsel for the hearing. Accordingly, we cannot conclude that the magistrate abused his discretion in denying the continuance. See Kohut v. Kohut, 164 Vt. 40, 45 (1995) (granting continuance is a matter of discretion, and court did not abuse discretion in denying request for continuance to obtain attorney).

Next, mother appears to contend that the court erred in affirming the magistrate=s decision to grant father=s request to have the monthly support obligation withheld from the wages paid by his employer through the Office of Child Support. The court correctly noted, however, that in any case where a child support order does not include an order for wage withholding the obligee or obligor may request such an order and the court is required, by statute, to Aenter a judgment for wage withholding@ where A[t]he obligor has requested the wage withholding order.@ 15 V.S.A. ' 782(d)(2). Furthermore, the parties had apparently experienced some difficulty attempting to utilize electronic transfers in the past. While the divorce decree (which was not artfully drafted) anticipates such a payment method, the use of any one particular payment method was not critical to the decree. Accordingly, there is no merit to mother=s claim that the court modified the decree without justification.

Mother also challenges on several grounds the formula for allocating child and spousal support. As a threshold matter, she contends that the order, drafted by father=s counsel, requiring that father=s gross income be calculated every July 1st based on the prior year=s tax returns did not reflect the magistrate=s ruling. Although the videotaped hearing reveals that the magistrate described the method in several different ways, the formula memorialized in the order was unquestionably faithful to the magistrate=s decision. Mother also claims that she was not accorded adequate notice of the issue, but the motion clearly requested the magistrate to allocate spousal and child support, which subsumed the need to formulate an appropriate method. The videotaped hearing also reveals that mother participated actively and effectively in the discussions which resulted in the allocation formula.

Mother also claims that monthly support payments calculated on the basis of father=s tax return from the prior year, rather than on the basis of each month=s current paycheck, represents an unwarranted modification of the divorce decree, but the decree does not set forth any particular method or time frame for calculating father=s gross income. Additionally, mother contends that the magistrate=s formula will ultimately deprive her of child support income and jeopardize other benefits. As to the latter, she claimed in the family court, although not here, that apportioning father=s yearly bonusCgenerally paid in MarchCover twelve monthly payments rather than including it in one payment for that month could render her ineligible for health benefits. These arguments were not clearly made before the magistrate and no evidence or argument was presented demonstrating that the formula would somehow deprive mother of support or other benefits. Accordingly, the claims were not adequately preserved for review by the family court, or by this Court. See V.R.F.P. 8(g)(4) (family court=s review of magistrate=s decision Ashall be solely on the record@ except where, for good cause shown, additional evidence is submitted); Tetreault v. Coon, 167 Vt. 396, 399 (1998) (review of magistrate=s decision is based on record made before the magistrate).

Finally, mother contends the order represented a substantial modification of the divorce decree without the requisite change of circumstances, and violated principles of res judicata. These claims were not adequately preserved for review. Furthermore, as noted, the provisions of the order requiring wage withholding and allocating spousal and child support do not clearly conflict with any provision in the original decree.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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[*] Father=s income was determined to be solely his wages as an employee of IBM, and mother had no income other than spousal support.