Court of Appeals, State of Michigan

ORDER

Denis Lee Newman v Chrystal Leigh Newman

Docket No. 314956

LC No. 10-005490-DM

Jane M. Beckering
Presiding Judge

William B. Murphy, C.J.

Joel P. Hoekstra
Judges

The Court orders that the circuit court's ruling in its February 4, 2013, order that the amounts of plaintiff's pension awarded as part of the property division may not be counted as income for the purpose of calculating child support is REVERSED, and that aspect of the order is VACATED. MCL 552.605 requires a court to "order child support in an amount determined by application of the child support formula." 2013 MCSF 2.01(C) says that "income" includes payments from a pension. Under 2013 MCSF 4.03(A), in order to deviate in the manner done by the circuit court, there must be an agreement between the parties to allow the court to award property in lieu of child support, and "the complete agreement must be clearly stated in the judgment of divorce to be given continued effect." The parties did not so agree, and no such agreement was stated in the judgment of divorce, clearly or otherwise. Rather, the court decided on its own to award the pension as marital property and to not allow the pension to be included as income for the purpose of calculating plaintiff's support obligation. Therefore, the court was without authority to deviate from the child support guidelines; i.e., it was without authority to exclude plaintiff's pension income from the calculation of income for the purpose of calculating child support, either now or in the future. We REMAND for proceedings consistent with this order. We do not retain jurisdiction.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 27 2013
Date

Chief Clerk