COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-984

JULIE A. NORRIS

vs.

WHITTON E. NORRIS, THIRD.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The father appeals from a judgment (dated January 12, 2018) entered after trial[1] on his complaint for modification (filed June 3, 2016) and the mother's complaint for contempt (filed January 4, 2016). The father raises three issues on appeal. First, he argues that the award of postminority child support was awarded without due process. Second, he argues that the postminority child support should not have been awarded. Third, he contends that the amount of the postminority child support arrearage was clearly erroneous. For the reasons set out below, we affirm the judgment except with respect to the calculation of

[1] The father's contentions that the complaints were decided without a trial, or without notice, are unsupported by the record. The docket reflects that a trial took place on October 19, 2017. The judge's judgment and rationale also recites that, by agreement of the parties, a trial by representation took place on that date.

the monthly amount of postminority child support and the calculation of the amount of postminority child support arrearage. Those aspects of the judgment are vacated because the judge did not make findings to explain how he arrived at the figures, and the record does not permit us to reconstruct the judge's decision-making.[2] Accordingly, we remand for further proceedings to establish the amount of postminority child support and any arrearage related to it.[3]

We begin by noting that the father has failed to meet his obligation to provide an appellate record sufficient to review most of his claims. See Mass. R. A. P. 18 (a), as appearing in 481 Mass. 1637 (2019). More particularly, he has failed to provide either a transcript of the trial, any of the mother's filings or pleadings, the earlier pertinent child support awards and agreements, or the parties' financial statements. For this reason alone, most of the father's arguments fail. Specifically, his argument that he did not receive due process because he had no notice, whether from the mother's filings or from the court, that postminority child support was at issue is

[2] After oral argument, while retaining jurisdiction over the appeal, we issued an order seeking additional findings from the judge without taking new evidence. In response, we were informed the trial judge has retired.

[3] At oral argument, the father clarified that he was challenging the arrearage calculation only to the extent it turned on unpaid postminority child support.

not properly before us because he has failed to provide a record sufficient to show what he did (or did not) have notice of.[4] See Shawmut Community Bank, N.A. v. Zagami, 411 Mass. 807, 811 (1992). For the same reasons, the father's arguments that the factual predicates for an equitable award of postminority child support were not present (such as that the mother is the legal guardian of the child,[5] that the child is disabled and will remain domiciled with the mother and is dependent on her for support into the indefinite future,[6] and that the father is financially able to pay) also fail. Without a record of what occurred during the trial, and the submissions the parties made in connection with it, none of the fact-dependent arguments can succeed. In short, on the record presented, the father has given us no reason to conclude that the judge erred in making an equitable award of postminority child support. To the contrary,

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[4] Moreover, the extremely limited appendix he has provided undercuts the father's due process claim. For example, the father's posttrial briefing indicates that he was earlier aware of -- and had briefed -- the issue of postminority child support.

[5] The judge found that the mother was appointed the child's legal guardian on January 3, 2017. Although the father nakedly challenges this finding, we note that he has failed to provide any support for his position.

[6] It is clear from the judge's decision that he concluded that the child is "incapacitated," consistent with the statutory scheme for guardianship, and for an equitable award of postminority child support under Vaida v. Vaida, 86 Mass. App. Ct. 601 (2014). See also Feinberg v. Diamant, 378 Mass. 131 (1979).

the judge amply explained his rationale in a detailed decision that reflected a clear and correct understanding of the legal principles and constraints involved in the award of postminority child support. See Eccleston v. Bankosky, 438 Mass. 428 (2003); Feinberg v. Diamant, 378 Mass. 131 (1979); Vaida v. Vaida, 86 Mass. App. Ct. 601 (2014); Saia v. Saia, 58 Mass. App. Ct. 135 (2003).

That said, the amount of the award stands on slightly different footing. In particular, the judge did not explain how he arrived at the monthly payment amount of $1,022, except to say that it was a continuation of the amount previously awarded under a judgment dated September 9, 2012, which in turn was based on an agreement between the parties.[7] The judge's decision does not indicate why the amount awarded in 2012 (when at least one, and perhaps even both, of the children was unemancipated) remained the appropriate amount in 2018. We do not mean to suggest that the amount of the postminority child support award is incorrect, simply that it is unexplained.

Accordingly, we vacate so much of the January 12, 2018 judgment as awards $1,022 in ongoing postminority child support

[7] Neither the September 9, 2012 judgment, nor the modification agreement upon which it was based, is in the record. It is not clear whether the 2012 judgment was for both children (as the father argues) or only for the younger child for whom postminority support the judge ordered.

for the younger child, as well as the portion of arrearage that depends on that figure, and remand for further findings. However, until a new judgment enters in the trial court, the father shall continue to make postminority child support and arrearage payments as ordered in the January 12, 2018 judgment. The remainder of the judgment is affirmed.

So ordered.

By the Court (Wolohojian, Milkey & Shin, JJ.[8]),

Joseph F. Stanton

Clerk

Entered: June 11, 2021.

[8] The panelists are listed in order of seniority.