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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

(Clerk's Date Stamp)

SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE	
Petitioner(s): SIRINYA SURINA vs. Respondent(s): AARON SURINA	**CASE NO. 17-3-01817-0** **ORDER DENYING MODIFICATION OF CHILD SUPPORT AND ALLOCATION OF COMMUNITY EXPENSES** **ORDER RE: 2017 TAX RETURN (OR)**

I. BASIS

The Respondent moved the court for an order to modify his temporary order of child support and spousal maintenance.

The Petitioner moved the Court for an order for the parties to file a community 2017 federal tax return to maximize the benefit to the community.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

Good cause does not exist to modify the temporary order of child support entered September 28, 2017 or the allocation of debts/liabilities to the parties entered September 28, 2017.

There has been no substantial change of circumstances in the Respondent's income from September 2017 until current. The Court calculated the Respondent's gross monthly income based upon his 2017

W-2 he provided. The monthly gross income off his W-2 was $9356.00. At the time of the hearing, the Court calculated his monthly gross income at $9398.00 based upon his year to date income on his paystub ending July 8, 2017 (the most recent paystub provided at the time). The different of $42.00 per month is not a substantial change of circumstances.

Mr. Gagnon has access to a database with Respondent's income. Respondent's 4th quarter income for 2017 actually increased from previous quarters ($32,826.94). For the 4th quarter of 2017, Respondent's gross monthly income was $10,942.00 per month. The information shows Respondent's gross monthly income actually increased by $1,544.00 per month for the 4th quarter.

Respondent submitted one paystub (1/7/18-1/20/18). This paystub shows a gross income for two pay periods year to date to be $7974.19. Averaging this over 26 pay periods would be $8638.50 per month. While lower than other calculations of Respondent's income, based upon historical earnings and paystubs, it appears Respondent earns differentials and other sources of income from his employment over the course of a year. The first two pay periods of the year are not indicative of Respondent's yearly earnings.

Mr. Surina incorrectly asked for a modification of spousal maintenance. A review of the transcript of the hearing and the temporary orders, show the Court specifically did not order spousal maintenance. It would be therefore inappropriate to include any payment of spousal maintenance on the child support worksheets (either as income to Petitioner or a deduction to Respondent).

The Court also finds it inappropriate to exclude any overtime from the calculation of Respondent's income. 26.10.071 (4)(i) as the Respondent has not met the burden under the statute that the overtime will cease upon retirement of debt/child support/family's current needs.

The Court also finds it is more appropriate for the community to file their 2017 federal tax return "Married filing jointly." Respondent filed Married filing Separate with one of the children for an exemption. This gave him a $1,077.00. It was represented to the Court if the parties had filed a joint tax return, the refund would have been $2421.00.

Respondent does not wish to file because he claims Petitioner has foreign income she is hiding. This is not persuasive to the Court as he has presented no evidence of foreign income despite conducting discovery and he has previously filed his tax returns "Married Filing Joint" and there has been no mention of any foreign income on those tax returns. The parties lived together for over one half of 2017, not separating until August.

III. ORDER

IT IS ORDERED that:

Respondent's Motion to modify child support is denied. There has been no spousal maintenance ordered at any time and therefore the request to modify spousal maintenance is also denied. The Court denies reallocation of fees as there has been no change in circumstances.

Petitioner's motion for the community to file a 2017 federal tax return jointly is granted. Respondent shall work with Petitioner's counsel to get an amended federal tax return filed. The community will then split the refund 50/50 after the costs of filing.

The Court denies any request for attorney fees as there was no motion before the Court.

Dated: 3/15/18

Commissioner Swennumson