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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2063-21**

EVAN EVANGELOU,

Plaintiff-Appellant,

v.

KATARINA J. DOCKUM,

Defendant-Respondent.

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Submitted February 15, 2023 – Decided March 3, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Essex County, Docket  
No. FD-07-3548-18.

Paul Gauer, attorney for the appellant.

Katarina J. Dockum, respondent pro se.

PER CURIAM

Plaintiff Evan Evangelou and defendant Katarina J. Dockum are the  
parents of a child born in 2015. They share joint legal custody. Defendant is

the parent of primary residence, and plaintiff is the parent of alternate residence. Plaintiff appeals from a June 24, 2021 order directing he pay defendant \$244 per week in child support.<sup>1</sup> Plaintiff also appeals from orders denying his motion for reconsideration of the child support order.<sup>2</sup> Based on our review of the record and applicable legal principles, we vacate the child support order and remand for further proceedings.

On February 11, 2021, defendant moved for a child support order.<sup>3</sup> The court conducted an evidentiary hearing on the application. At the hearing, plaintiff testified concerning his income, assets, and employment.<sup>4</sup> Plaintiff

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<sup>1</sup> The child support order also requires plaintiff pay \$30 per week for child support arrears that accrued between the February 11, 2021 filing of defendant's motion for child support and the June 24, 2021 entry of the child support order.

<sup>2</sup> The court entered a January 27, 2022 order denying plaintiff's motion for reconsideration. The next day, the court filed a corrected version of the order. Plaintiff appeals from both orders denying the reconsideration motion, as well as the separate order setting his child support obligation at \$244 per week.

<sup>3</sup> We are unable to discern whether defendant sought any other relief in her motion. We note plaintiff's appendix on appeal does not include defendant's motion papers. See R. 2:6-5. Plaintiff's failure to provide the complete trial court record on appeal does not, however, prevent our disposition of the issues presented.

<sup>4</sup> At the outset of the hearing, there is a reference to testimony plaintiff provided the "last time [the parties] were here[,]" suggesting the court heard testimony on defendant's child support motion at a prior hearing. Plaintiff has not provided a

denied owning any assets, explaining the 2020 truck he drove was leased by his wife, who paid all expenses associated with the truck. Plaintiff first denied ownership of a residential property his wife purchased for \$522,000 but later conceded he was a "half owner" of the property because his wife had deeded the property to him and her for \$1. Plaintiff also denied living on the property with his wife, testifying he resided with his parents.

Plaintiff further testified he had a total of about \$700 in bank accounts and did not have any investment accounts he was "aware of." He conceded his 2020 tax return shows he owned two businesses, Evans Home Improvement Service LLC, and Pita Bowl, LLC, which operates a "food truck." He testified Pita Bowl, LLC does not actually own a food truck, but it instead owns a trailer from which it sells food. He claimed his wife owns the trailer and financed its purchase, but he denied any knowledge of the financing or purchase terms. Plaintiff also testified that at some point he transferred his ownership interest in Pita Bowl, LLC to his wife, as well as "the lien on the trailer . . . ."

Plaintiff also testified his employment is limited to working for Pita Bowl, LLC in the trailer. He explained the food is sold from the trailer at only twelve

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transcript of any prior proceedings, and defendant does not argue that failure deprives this court of any information or evidence necessary for a disposition of the issues raised on appeal.

events per year. He estimated the food truck earns a \$400 net profit for each event, and his wife pays him a salary of about \$200 per event.

Plaintiff acknowledged the website for Evans Home Improvement Service LLC advertises its business as a "[h]andyman service," a "general contractor," and a "remodeling contractor." Plaintiff, however, testified the business never provided general or remodeling contractor services and was limited to him performing handyman services, such as making small home improvements and repairs. Plaintiff testified that in 2019, he "stopped completely" performing handyman services because he "wasn't making enough money in that business." Plaintiff, however, has a New Jersey "home improvement renovation license."

When asked what he planned to do "to occupy [him]self," plaintiff testified his "wife prefers [him] to stay home and just . . . clean and . . . cook for her" because "[s]he's the one that's coming home with the money . . . ." Plaintiff denied any knowledge of his wife's income and claimed he had "never seen her bank account" because "[s]he doesn't want [him] to see her bank account."

Following the hearing testimony, and the closing arguments of defendant's counsel and plaintiff, who appeared pro se, the court rendered an oral opinion on defendant's motion for child support. The court determined plaintiff is "underemployed" and "purposely used subterfuge to conceal his co[-]mingled

assets with that of his wife." The court further determined plaintiff was not a credible witness, detailing numerous examples from plaintiff's testimony where plaintiff attempted to conceal or misrepresented facts pertaining to his finances, failed or refused to answer questions, or was evasive and argumentative.

The court found plaintiff "has the equivalent of a general contractor's license and an active website" that identifies his business as a "[g]eneral contractor[.]" The court further found plaintiff "has an active food business" but noted plaintiff testified "that the profit level is very low." The court explained the law permits the imputation of income to a party that is "without just cause, . . . voluntarily underemployed or unemployed[.]" The court determined it was appropriate to impute income to plaintiff.

The court noted defendant requested imputation of between "\$75,000 and \$125,000 per year" as plaintiff's income, and plaintiff claimed he made only between "[\$]14,000 and \$20,000" annually. The court then cited a United States Department of Labor wage survey, finding it provided the annual wage "for a head chef is \$83,700 . . . ." The court determined that, based on "the testimony regarding [plaintiff's] work in the food[/]restaurant industry as well as the home improvement industry, . . . the [c]ourt set[] an imputed wage for [plaintiff] at \$80,000 per year."

Using the Sole Parenting Worksheet under the New Jersey Child Support Guidelines, the court calculated plaintiff's child support obligation based on an \$80,000 per annum imputed income for plaintiff and defendant's income.<sup>5</sup> The calculation set plaintiff's child support obligation at \$244 per week. The court entered a memorializing order, which included its findings of fact.

Plaintiff later moved for reconsideration of the court's order before a different judge. In pertinent part, plaintiff argued the court erred by imputing an \$80,000 annual income to him, and, for that reason, the child support award was incorrect. After hearing argument on the motion, the court entered an order denying the reconsideration motion. This appeal followed.

We review a court's decision to impute income to a parent for an abuse of discretion. Ibrahim v. Aziz, 402 N.J. Super. 205, 210 (App. Div. 2008). We will not reverse a court's exercise of its "discretionary authority unless 'the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence.'" Ibid. (quoting Storey v. Storey, 373 N.J. Super. 464, 479 (App. Div. 2004)).

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<sup>5</sup> The record on appeal does not include any evidence establishing the income attributed to defendant on the worksheet. Plaintiff, however, does not challenge on appeal the amount of income attributed to defendant.

We will not disturb the trial court's fact findings unless they are demonstrated to lack support in substantial, credible, record evidence. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). Because of the Family Part's special expertise, we accord particular deference to its fact-findings and to the conclusions that logically flow from those findings. Cesare v. Cesare, 154 N.J. 394, 412-13 (1998).

In its discretion, a court may impute income to a non-custodial parent where the parent is voluntarily unemployed or underemployed without just cause. Ibrahim, 402 N.J. Super. at 211. Imputation of income is also appropriate where a parent fails "to provide adequate financial information . . . ." Tash v. Tash, 353 N.J. Super. 94, 99 (App. Div. 2002).

"When imputing income, the trial court must first decide whether the circumstances warrant the imputation of income, and if so, it must then determine the amount of income to impute." Ibrahim, 402 N.J. Super. at 210. Here, plaintiff does not challenge the trial court's determination the circumstances warrant the imputation of income to him. See Drinker Biddle & Reath LLP v. N.J. Dept. of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining an issue not briefed on appeal is deemed

abandoned). We therefore limit our discussion to plaintiff's claim the court erred in determining the amount of the imputed income.

A determination of a party's imputed income "must be 'based on a realistic assessment of a [parent's] capacity to earn'" because "the underpinnings for a support award is the obligor's ability to pay." Ibrahim, 402 N.J. Super. at 213 (emphasis added) (quoting Storey, 373 N.J. Super. at 474); see also Storey, 373 N.J. Super. at 474 (explaining determination of amount of imputed income requires "a trial judge to realistically appraise capacity to earn and job availability"). The determination is guided by our Rules of Court, which mandate application of the child support guidelines where, as here, "an application to establish . . . child support is considered by the court." R. 5:6A. The guidelines prescribe the manner in which, and the standards by which, a court shall impute income to a parent for purposes of determining child support. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, ¶ 12, [www.gannlaw.com](http://www.gannlaw.com) (2023).

Under paragraph 12 of the guidelines, the court must consider the following "[i]n determining the amount of income to be imputed" to a parent:

the specific circumstances of the parent for whom income imputation is being considered, to the extent known, including but not limited to the following factors: assets; residence; employment and earnings



history (as demonstrated by pay stubs, tax returns, Social Security records, disability statements or other records reflecting all sources of earned and unearned income); job skills; educational attainment; literacy; age; health; criminal record and other employment barriers; record of seeking work; the local job market; the availability of employers willing to hire; prevailing earnings level in the local community; what the employment status and earning capacity would have been if the family formed or remained intact; the reason and intent of the underemployment or unemployment; the ages of children in the household and child-care alternatives; the U.S. Bureau of Labor Statistics if the parent works outside of New Jersey; and other relevant background factors in the case.

. . . .

[Id. at ¶ 12(a).]

The guidelines also provide additional factors to be considered, and those that may not be properly considered, in a court's determination of the amount of income that may be properly imputed. Id. at ¶¶ 12(b) to (d).

Here, the court's imputation of an \$80,000 income to plaintiff is untethered to any analysis of the factors pertinent to such a determination under the guidelines. Instead, the court's determination of the amount of income imputed is based on the singular finding that plaintiff's "work in the food[/]restaurant industry as well as the home improvement industry" warranted the imputation of income that would be earned by a "head chef . . . ." The court

further relied on a "U.S. Department of Labor wage survey" that was not introduced as evidence at trial and is otherwise unidentified by a citation to any authority.

We are constrained to vacate the June 24, 2021 child support order because the court did not make any findings of fact supporting its determination defendant is capable of earning an income as a "head chef" as that term may be defined under the wage survey upon which the court relied. See R. 1:7-4. Moreover, the scant record presented at the hearing lacks evidence plaintiff has the knowledge, education, or experience such that he is qualified for employment as a "head chef . . . ."

The evidence presented shows only he has worked for his wife's food truck business and cooked as part of his duties. Defendant's role in the food truck business, and whether his experience in the business qualifies him as someone capable of earning the wages of head chef, is simply not sufficiently developed in the trial record to support the court's determination. See Caplan v. Caplan, 182 N.J. 250, 270 (2005) (imputing income based on the income the parent was capable of earning based on previous employment). Moreover, in determining a head chef's income should be imputed to plaintiff, the court illogically also relied on plaintiff's experience in his home improvement business.

The court also incorrectly relied on a U.S. Department of Labor wage survey to determine the amount plaintiff purportedly could be expected to earn if employed as a head chef. We are unable to consider whether the court's interpretation of the survey is correct because it was not introduced in evidence, is not part of the record, and the court did not provide a citation to it allowing for its review on appeal.

More importantly, where "evidence is unavailable or insufficient to determine income based on the factors in subparagraph 12(a)" of the guidelines, "the court may impute income based on the parent's former income at that person's usual or former occupation or the earnings for that occupation as reported by the New Jersey Department of Labor" if the person works in New Jersey. Pressler & Verniero, Appendix IX-A to R. 5:6A, ¶ 12(b) (emphasis added). The guidelines provide the court is to use United States Bureau of Labor Statistics to compute imputed income only where the person "works outside of New Jersey[.]" Ibid.

There is no evidence plaintiff worked outside New Jersey. Thus, if the court determined the evidence did not permit a calculation of the imputed income under the factors in paragraph 12(a) of the guidelines, the court should have used the New Jersey Department of Labor earnings information to

determine the imputed income. And the court should have "impute[d] income based on the full-time employment . . . at the New Jersey minimum wage" if plaintiff's potential earning capacity was otherwise not available. Caplan, 182 N.J. at 265.

In sum, although its determination plaintiff's testimony was not credible is amply supported by the record, court abused its discretion by failing to consider, apply, or make findings concerning the factors required to determine the amount of imputed income under the child support guidelines. See Pressler & Verniero, Appendix IX-A to R. 5:6A, ¶¶ 12(a) to (d); see also R. 5:6A. The court also erred by failing to apply the requisite legal standard, as set forth in the guidelines, to determine the income to be imputed to plaintiff. Additionally, the court's determination plaintiff has the capability to become employed as head chef is not supported by sufficient credible evidence in the trial record. Cf. Overbay v. Overbay, 376 N.J. Super. 99, 106–07 (App. Div. 2005) (explaining a court's determination of the amount of income imputed to a parent will not be overturned unless the underlying findings are inconsistent with or unsupported by competent evidence).

We vacate the June 24, 2021 child support order and remand for the court to reevaluate the record or, in its discretion, reopen the record for presentation

of additional evidence to allow first a determination of the proper amount of imputed income and then a recalculation of plaintiff's child support and any other related obligations. The trial court may establish a pendente lite child support obligation for defendant pending the outcome of the remand proceeding. Any adjustments to the child support obligation payments set in the June 24, 2021 order made as a result of the remand shall be retroactive to the date plaintiff filed his motion for reconsideration of the June 24, 2021 child support order. N.J.S.A. 2A:17-56.23a.

In ordering the court establish a pendente lite child support obligation pending the outcome of the remand proceeding, we do not suggest the child support obligation set in the June 24, 2021 must be decreased. The amount of any pendente lite order shall be founded on the record presented and based on the court's consideration of all appropriate factors.

We also do not offer an opinion on the amount of income that should be imputed to plaintiff following the remand hearing. That determination shall be made by the remand court based on the evidence. The court's determination shall be supported by findings of fact and conclusions of law as required under Rule 1:7-4. Because we vacate the June 24, 2021 child support order, it is

unnecessary to address plaintiff's claim the court erred by entering the January 26 and 27, 2022 orders denying his motion for reconsideration.

Vacated and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION