Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

CHARLES E. ENGEMAN, Appellant/Respondent, v. **KIMBERLY L. ENGEMAN,** Appellee/Petitioner.	)))))))	**S. Ct. Civ. No. 2015-0023** Re: Super. Ct. DI. No. 89/2010 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Debra S. Watlington

Considered and Filed: July 2, 2015

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Charles E. Engeman, Esq.
St. Thomas, U.S.V.I.
Pro se,

Andrew L. Capdeville, Esq.
Law Offices of Andrew L. Capdeville, P.C.
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to the appellant's motion for a stay pending appeal, which requests that this Court temporarily enjoin enforcement of a February 4, 2015 Superior Court opinion and order directing him to pay child support in accordance with a March 11, 2010 separation agreement he entered into with the appellee, his former wife. For the reasons that follow, we deny the motion.

I. BACKGROUND

On May 13, 2010, the parties filed a joint petition for divorce in the Superior Court of the Virgin Islands. The joint petition included the March 11, 2010 separation agreement as an attachment, which contained provisions that the appellant would pay (1) child support in the amount of 25 percent of his actual net pay with a minimum monthly payment of $5,000, until their first child reaches the age of 18; (2) reduced monthly child support in the amount of 20 percent of actual net pay with a minimum monthly payment of $4,000 after their first child turns 18 but before their second child turns 18; (3) the costs of both children's private school tuition, books, extracurricular activities, and related expenses, as well as medical expenses, through the twelfth grade; and (4) share, with the appellee, the costs of college tuition, room, and board until the children's twenty-third birthdays, in proportion to their gross income for the prior year. The Superior Court issued a divorce decree on June 22, 2010, which provided that the March 11, 2010 separation agreement would be "hereby merged into the Decree of Divorce, and its terms shall survive th[e] action for divorce." (Mot. Exh. D.)

On October 1, 2013, the appellant filed a petition with the Department of Justice's Division of Paternity and Child Support, which requested that his child support payments be modified to be consistent with the Child Support Guidelines mandated by the Virgin Islands Code. *See* 16 V.I.C. §§ 345(b)-(c); 16 V.I. R. & REGS. § 345-01; *Bradford v. Cramer*, 54 V.I. 669, 673 (V.I. 2011). The Division, in a January 2, 2014 order, found that the matter required judicial resolution, and transferred the appellant's petition to the Superior Court. Although the parties initially attempted to mediate the dispute, they were unable to reach a resolution, and thus the appellant filed an emergency motion with the Superior Court on May 6, 2014, requesting that it resolve the child

support issue. The appellee subsequently filed an opposition as well as a separate motion to enforce the terms of the March 11, 2010 separation agreement.

The Superior Court held an evidentiary hearing on January 22, 2015, and issued an opinion and order on February 4, 2015, in which it held that the March 11, 2010 separation agreement remained valid and refused to alter any of its terms. The appellant filed his notice of appeal with this Court on March 3, 2015, and on the same day filed a motion with the Superior Court requesting that it stay its decision pending appeal. After the Superior Court denied his request for a stay on May 22, 2015, and the appellant filed the instant motion with this Court on June 1, 2015, which the appellee has opposed.

II. DISCUSSION

"To determine whether a litigant is entitled to a stay [or injunction] pending appeal, this Court considers: (1) whether the litigant has made a strong showing that he is likely to succeed on the merits; (2) whether the litigant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies." *Tip Top Constr. Corp. v. Gov't of the V.I.*, S. Ct. Civ. No. 2014-0006, 2014 V.I. Supreme LEXIS 15, at *2 (V.I. Feb. 14, 2014) (unpublished) (quoting *In re Najawicz*, S. Ct. Crim. Nos. 2008-0098, 0099, 2009 V.I. Supreme LEXIS 2, at *5-6 (V.I. Jan. 8, 2009) (unpublished)). Although "[t]he first of these factors is ordinarily the most important," a stay pending appeal may nevertheless be granted if a party shows a "substantial case on the merits" and that "the balance of equities, as determined by the other three factors, clearly favors a stay." *Rojas v. Two/Morrow Ideas Enterprises, Inc.*, S. Ct. Civ. No. 2008-0071, 2009 V.I. Supreme LEXIS 6, at *5 (V.I. Jan. 22, 2009) (unpublished) (internal quotation marks and citations omitted).

We conclude that the appellant has not met his burden. Although he heavily emphasizes that this Court held in *Bradford* that "a court *must* follow the Child Support Guidelines in all proceedings containing an action for child support," 54 V.I. at 673 (emphasis in original), he ignores the fact that, through his May 13, 2010 divorce petition filed jointly with the appellee, he affirmatively requested the Superior Court to set child support in the amount set forth in the March 11, 2010 separation agreement. Thus, even if the appellant is correct that courts must adhere to the Child Support Guidelines and may not simply rubber-stamp child support agreements negotiated by the parties to a divorce action, it appears that the appellant induced the Superior Court to commit the very error that he now complains of on appeal. Consequently, the fact that the Superior Court may have acted contrary to this Court's *Bradford* precedent may not necessarily compel reversal. *See Williams v. People*, 59 V.I. 1024, 1033 (V.I. 2013) ("[W]hen a [party] . . . induces or encourages the Superior Court to commit an error, the invited error doctrine precludes that error from forming the basis for reversal on direct appeal."); *Fontaine v. People*, 56 V.I. 571, 583 (V.I. 2012); *see also Zanoletti v. Norle Props., Inc.*, 688 So. 2d 952, 954 (Fla. Dist. Ct. App. 1997) ("Invited error occurs when the appellant somehow induced the specific ruling by her affirmative action."). And even if the appellant did not induce the Superior Court's error, his failure to attempt to rectify it for more than three years raises a serious question as to whether it has been waived. *Accord, Etienne v. Etienne*, 56 V.I. 686, 691 (V.I. 2012). While it is possible that, after full briefing on the merits, the appellant may potentially be able to establish an exception to the invited error and waiver doctrines, his failure to address these issues at all in his motion for a stay precludes this Court from weighing this factor in his favor.

Additionally, the appellant fails to acknowledge that the Child Support Guidelines only "create a *rebuttable presumption* that the amount resulting from the application thereof is the

correct amount of child support to be awarded." 16 V.I.C. § 345(b) (emphasis added). Consequently, even if this Court were to ultimately hold that the Superior Court committed error and that the appellant's inducement of that error could be overlooked, it would not automatically result in his child support payments being adjusted to be in accordance with the Child Support Guidelines; rather, the appropriate action would be a remand for the Superior Court to calculate a potential child support award under the guidelines and then determine whether any record evidence rebuts the presumption. To wholly stay enforcement of the February 4, 2015 order pending appeal would in effect provide the appellant with greater relief than he could possibly obtain even if he succeeds on appeal. *Accord, Better Bldg. Maint. of the V.I., Inc. v. Lee*, 60 V.I. 740, 762 (V.I. 2014) (citing *People v. Ward*, 55 V.I. 829, 841 (V.I. 2011)).

Likewise, the appellant has failed to make any showing of irreparable harm. As this Court has previously explained,

> Irreparable harm is "certain and imminent harm for which a monetary award does not adequately compensate." *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003); *see also Danielson v. Local 275, Laborers Int'l Union of N. Am., AFL-CIO*, 479 F.2d 1033, 1037 (2d Cir. 1973) ("Irreparable injury is suffered where monetary damages are difficult to ascertain or are inadequate."). Thus, when "the record indicates that [a plaintiff's loss] is a matter of simple mathematic calculation," a plaintiff fails to establish irreparable injury for preliminary injunction purposes. *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551-52 (4th Cir. 1994) (quoting *Graham v. Triangle Pub.*, 344 F.2d 775, 776 (3d Cir. 1965)).

Yusuf v. Hamed, 59 V.I. 841, 854 (V.I. 2013). In this case, it is clear that the sole issue in dispute is the amount of the appellant's child support payments, and if it is ultimately held that he has been required to pay too much in child support to the appellee, the extent of the appellant's overpayment is readily ascertainable, and may be remedied by requiring the appellee to refund that amount. Although the appellant, perhaps recognizing that a monetary loss alone will rarely—if ever—

constitute an irreparable injury, contends that the Superior Court's order has "put [him] in a position where he resents every additional, discretionary dollar he pays for his children," (Mot. 10), this cannot form the basis for an irreparable harm finding, particularly when most individuals who are the subject of a monetary judgment with which they disagree will resent paying the judgment.

We also conclude that granting a stay may substantially injure the parties' children. The Superior Court, in its order denying the appellant's motion for a stay pending appeal, found that staying enforcement of the February 4, 2015 order "will prevent [the parties] from enrolling the children in school for next year by failing to meet the deadline" for registration. (Mot. Exh. B.) Although he contends in his reply to the appellee's opposition that there is no impediment to registering the children at their current school, the appellant has cited to no record evidence whatsoever to support that claim, and thus we cannot conclude that the Superior Court's factual finding is clearly erroneous. And as to the last factor—the public interest—this Court has already held that the public interest will generally favor requiring parties to honor their contractual agreements. *Rojas*, 2009 V.I. Supreme LEXIS 6, at *6. While the appellant invokes the general principle that it is in the public interest for the courts to follow statutory law, *see In re Elliot*, 54 V.I. 423, 432 (V.I. 2010), we emphasize again that he has failed to establish that the Superior Court acted wrongfully when it refused to modify his child support obligations based on an error that he may have induced himself. Accordingly, we conclude that all four factors heavily weigh against granting a stay pending appeal in this matter.

III. CONCLUSION

For the foregoing reasons, we deny the appellant's motion to stay the Superior Court's

February 4, 2015 order pending this appeal.[1]

Dated this 2nd day of July, 2015.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

[1] Because the legal issues addressed in this opinion were resolved without the benefit of full briefing by the parties, the parties are advised that the conclusions reached herein shall not govern disposition of this appeal and that this opinion should not be cited as binding authority in the parties' merits briefs.