

Superior Court of New Jersey,
Chancery Division, Family Part,
Burlington County.
Bertram MARTIN, Plaintiff,
v.
Adrienne MARTIN, Defendant.
Decided April 24, 2009.

Background: Former wife filed motion to increase child support.

Holding: The Superior Court, Chancery Division, [Haas](#), J.S.C., held that wife was not entitled to court review based upon passage of three years since time of entry of current child support order, in a case of apparent first impression.

Motion denied.

West Headnotes

[1] Child Support 76E  234

[76E](#) Child Support
[76EVI](#) Modification
[76EVI\(A\)](#) In General
[76Ek234](#) k. Materiality of change. [Most Cited Cases](#)

Before motion to modify child support is considered, party seeking modification must normally demonstrate that specific and substantial changed circumstances have occurred since the time of the governing order which would warrant a modification of support.

[2] Child Support 76E  234

[76E](#) Child Support
[76EVI](#) Modification
[76EVI\(A\)](#) In General
[76Ek234](#) k. Materiality of change. [Most](#)

[Cited Cases](#)

Child Support 76E  236

[76E](#) Child Support
[76EVI](#) Modification
[76EVI\(B\)](#) Particular Factors and Grounds
[76EVI\(B\)1](#) In General
[76Ek236](#) k. In general. [Most Cited](#)

[Cases](#)

Former wife seeking increase in child support was not entitled to court review based upon passage of three years since time of entry of current child support order; wife failed to establish a substantial change of circumstances since the time of the last order. [N.J.S.A. 2A:17-56.9a](#); R. 5:6B.

**333 Bertram Martin, plaintiff pro se.

Dwaine Williamson, for defendant.

[HAAS](#), J.S.C.

*2 This case involves the interpretation of a September 1, 1998 amendment to [N.J.S.A. 2A:17-56.9a](#) which has never before been addressed in a published opinion.

The parties were divorced on January 22, 2004, and a dual final judgment of divorce, with a property settlement agreement, was filed on that same date. The parties have two children, W. who was born on November 7, 1991, and V. who was born on July 4, 1993. Under their agreement, the parties shared joint custody of the children and they equally shared parenting time. The parties agreed that neither would pay child support to the other so long as they continued to equally share parenting time.

Plaintiff subsequently began having less parenting time with the children and defendant filed a post-judgment motion to establish child support. A Title IV-D support order was entered on June 24, 2005. Pursuant to this order, plaintiff was required to pay

defendant \$98 per week in child support. Defendant received a cost-of-living adjustment on May 29, 2007, and plaintiff's support obligation is now \$104 per week.

[1] Over three years have passed since the entry of the original order, and defendant has now filed a motion seeking an increase in child support. Before such a request is considered, a party must normally demonstrate that specific and substantial changed circumstances have occurred since the time of the governing order which would warrant a modification of support. *Lepis v. Lepis*, 83 N.J. 139, 151, 416 A.2d 45 (1980). Defendant is unable to make such a showing here. However, in *Doring v. Doring*, 285 N.J.Super. 369, 666 A.2d 1388 (Ch.Div.1995), the court held that child support orders are subject to review by a court every three years regardless of whether there has been a change of circumstances since the time of the prior order. As discussed below, this ruling was based upon the pre-1998 amendment version of *N.J.S.A. 2A:17-56.9a*. Defendant cites *Doring* and asserts *3 that, because three years have passed since the June 24, 2005 order, she is entitled to have a mandatory court review of child support and discovery of plaintiff's financial information.

As here, the *Doring* decision is frequently cited in situations where a party is unable to show the type of "changed circumstances" required by *Lepis*. The problem is that the statute upon which the *Doring* decision was based, *N.J.S.A. 2A:17-56.9a*, was amended in 1998 to eliminate the automatic three-year court review provision. Yet, because the 1998 amendment has not been addressed in a subsequent published decision, parties continue **334 to seek the three-year court review of child support orders discussed in *Doring*.

At the time *Doring* was decided in 1995, federal law required that, in order for a state to receive federal funding for its Title IV-D child support program, "the state must have in effect laws requiring the periodic review of all Title IV-D child support orders." *Id.* at 372, 666 A.2d 1388, citing 42 U.S.C.A. § 666. Accordingly, our Legislature had enacted *N.J.S.A. 2A:17-56.9a*. This statute provided in relevant part:

At least once every three years all IV-D orders for child support payments shall be subject to review in accordance with the rules promulgated by the

IV-D Agency in consultation with the Supreme Court. Such review should take into account any changes in the financial situation or related circumstances of both parties and whether the order of child support is in full compliance with the child support guidelines.

Relying upon the clear language of this statute, the *Doring* court properly found that all child support orders are subject to a triennial review by a court, regardless of whether there has been a change of circumstances since the time of the prior order.

However, after the *Doring* decision was issued, the Legislature amended the statute. L. 1998, c. 1, (*N.J.S.A. 2A:17-56.9a*) now provides in relevant part:

At least once every three years, *unless the State has developed an automated cost-of-living adjustment program for child support payments*, the parties subject to a Title IV-D support order shall be provided notice of their right to request a review, which shall be conducted in accordance with the rules promulgated by the State IV-D agency in consultation with the Supreme Court. Such review shall *4 take into account any changes in the financial situation or related circumstances of both parties and whether the order of child support is in full compliance with the child support guidelines. [Emphasis added.]

On July 10, 1998, the New Jersey Supreme Court adopted *Rule 5:6B*. This provides that all child support orders entered modified, or enforced after the effective date of this rule [September 1, 1998] shall provide that the child support will be adjusted every two years to reflect the cost of living. This adjustment is based on the consumer price index. Before any adjustment is made, the parties are provided with notice of the proposed adjustment and are given the opportunity to contest the adjustment within thirty days of their receipt of the notice. The rule specifically provides that the parties retain the right to seek a modification of child support orders based on changed circumstances.

Thus, child support orders are no longer subject to automatic court reviews every three years. Instead, the child support amount is automatically adjusted every two years to reflect the cost of living, with each party having an opportunity to contest the adjust-

ment. Pursuant to *Rule 5:6B*, such contests are limited to situations (1) where an obligor's income has not increased at a rate at least equal to the rate of inflation or (2) where the order itself provides for an alternative periodic cost-of-living adjustment. Otherwise, parties may contest a cost-of-living adjustment or seek a modification of a prior child support order only by showing that such a modification is warranted based upon changed circumstances. The mere passage of time since the entry of the child support order is not a sufficient reason to request that a court review the order or require that the parties exchange financial information.

****335[2]** Applying the 1998 amendment to [N.J.S.A. 2A:17-56.9a](#) and *Rule 5:6B* to the case at hand, defendant's request for a modification of child support based upon the passage of three years since the time of the entry of current child support order will not be considered. Defendant remains eligible for the administrative cost-of-living adjustments afforded to her under *Rule 5:6B*. However, in order to seek a court review of child support, defendant ***5** must establish that there has been a substantial change of circumstances since the time of the last order. Because she has failed to make this necessary showing here, defendant's motion is denied.

N.J.Super.Ch.,2009.
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410 N.J.Super. 1, 979 A.2d 332

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