

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

950

CA 25-00047

PRESENT: MONTOUR, J.P., SMITH, OGDEN, GREENWOOD, AND DELCONTE, JJ.

---

KENNETH R. ZATYKO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CAROLINE F. ZATYKO, DEFENDANT-RESPONDENT.

---

V. JULIA LUYSER, P.A., EAST CONCORD (V. JULIA LUYSER OF COUNSEL),  
FOR PLAINTIFF-APPELLANT.

LOTEMPPIO LAW FIRM, LLC, BUFFALO (TERRI L. LOTEMPPIO OF COUNSEL), FOR  
DEFENDANT-RESPONDENT.

---

Appeal from a judgment of the Supreme Court, Erie County (Catherine R. Nugent Panepinto, J.), entered October 23, 2024, in a divorce action. The judgment, among other things, dissolved the marriage of the parties and distributed marital property.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the second decretal paragraph and by reducing the retroactive payment to be awarded to defendant of \$46,402.71 to \$39,157.71, and as modified the judgment is affirmed without costs.

Memorandum: Plaintiff appeals from a judgment that, among other things, dissolved his marriage to defendant and distributed marital property.

We agree with plaintiff that Supreme Court abused its discretion in ordering the parties to annually exchange tax returns and recalculate spousal maintenance each year until both parties turn 70 (*see generally O'Brien v O'Brien*, 88 AD3d 775, 778 [2d Dept 2011]). Inasmuch as "[t]he amount of [a] maintenance award is a discretionary determination based upon a number of interrelated facts then in existence, . . . the parties' changing needs are best addressed in a future application for modification of the amount of maintenance" (*id.*; *see generally* § 236 [B] [9] [b] [1]; *Gahagan v Gahagan*, 172 AD3d 1007, 1008 [2d Dept 2019]; *Wilkins v Wilkins*, 129 AD3d 1617, 1618 [4th Dept 2015]). We thus modify the judgment by vacating the second decretal paragraph.

We further agree with plaintiff that the court abused its discretion in calculating the equitable distribution of the marital property by failing to credit him for payment of defendant's share of the 2019 income taxes. This Court will generally not disturb an

allocation of marital debts if the court "properly considered the factors set forth in Domestic Relations Law § 236 (B) (5) (d) and allocated marital debts in roughly the same proportion as it distributed the parties' . . . marital assets" (*Burns v Burns*, 70 AD3d 1501, 1503 [4th Dept 2010]). Here, however, the court abused its discretion in failing to provide plaintiff a credit for paying the 2019 income taxes in determining the equitable distribution of property (see *Morales v Carvajal*, 153 AD3d 514, 515 [2d Dept 2017]; *King v King*, 258 AD2d 717, 719 [3d Dept 1999]; see generally *Burns*, 70 AD3d at 1503). We therefore further modify the judgment by reducing the retroactive payment to be awarded to defendant of \$46,402.71 to \$39,157.71.

We have reviewed plaintiff's remaining contentions and conclude that none requires further modification or reversal of the judgment.