

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

RENAY D. KOPCZAK,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2011-A-0056
JASON A. KOPCZAK,	:	
Defendant-Appellant.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Domestic Relations Division, Case No. 2007 DR 171.

Judgment: Reversed and remanded.

William P. Bobulsky, William P. Bobulsky Co., L.P.A., 1612 East Prospect Road, Ashtabula, OH 44004 (For Plaintiff-Appellee).

Jason A. Kopczak, pro se, 1537 Elmwood Drive, Ashtabula, OH 44004 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Jason A. Kopczak, appeals the judgment of the Ashtabula County Court of Common Pleas modifying the award of spousal support in favor of his former wife, appellee, Renay D. Kopczak. At issue is whether the trial court had jurisdiction to modify its award of spousal support by extending the award beyond the fixed period of years established in the divorce decree. For the reasons that follow, we reverse and remand.

{¶2} The parties were married in 1994. Three children were born as issue of the marriage. The children are presently aged 10, 13, and 15. The parties separated after 12 years of marriage. Jason is approximately 39 years old and Renay is approximately 37.

{¶3} On April 19, 2007, Renay filed a complaint for divorce, spousal support, custody of the children, and child support.

{¶4} Following a hearing before the magistrate, on December 18, 2009, the trial court entered its “final judgment decree of divorce.” The court designated Renay as the residential parent and legal custodian of the children, and ordered Jason to pay child support. The court ordered that the parties’ marital residence be sold. Until the sale, Renay was entitled to retain possession of the home, and obligated to pay the mortgage, taxes, utilities, and insurance. The court ordered Jason to pay Renay spousal support in the amount of \$3,083.33/month for a period of four years. The decree also provided that the spousal support would terminate upon the death of either party, Renay’s remarriage, or her cohabitation with an unrelated male. Further, the decree provided that the court would “retain jurisdiction to modify *the amount* of support if the parties’ income changes and when the marital home is sold.” (Emphasis added.)

{¶5} On January 14, 2010, Jason appealed the divorce decree in *Kopczak v. Kopczak*, 11th Dist. No. 2010-A-0004.

{¶6} While that appeal was pending, on May 12, 2010, Jason filed a motion to modify spousal support in the trial court. He requested a reduction in “the award of spousal support” pursuant to the divorce decree due to a change in circumstances

arising from a \$50,000 decrease in his annual income since the time of the divorce decree.

{¶7} The parties eventually reached a settlement of the issues raised in the appeal. They incorporated the terms of their settlement in a consent entry. The trial court approved and filed that entry on July 2, 2010. Pursuant to the consent entry, Jason agreed to dismiss his appeal, and the parties agreed to modify certain provisions in the divorce decree. As pertinent here, the parties agreed that Jason would pay spousal support to Renay in the amount of \$3,083.33 per month for 48 consecutive months. They also agreed that the term of such payments would begin on June 1, 2009 and terminate on May 31, 2013. Moreover, they agreed that said award would terminate on the death of either party, Renay's remarriage, or her cohabitation with an unrelated male. Further, consistent with the divorce decree, they agreed that the court would "retain jurisdiction to modify *the amount* of spousal support if the parties' income changes and/or when the marital home is sold." (Emphasis added.)

{¶8} Jason's motion to modify spousal support came on for hearing before the trial court's magistrate on September 8, 2010. Following a hearing, on October 15, 2010, the magistrate filed her decision. She found a substantial change in circumstances had occurred that warranted a modification of the amount of Jason's spousal support obligation. At the time of the final hearing in 2008, Jason was employed by the Ashtabula County Medical Center as a certified public accountant earning \$140,000/year. In October 2009, he was terminated. The magistrate found his termination was not voluntary or for cause, but rather was due to a personality conflict with his supervisor over which Jason had no control. He received severance pay at his

previous rate of pay from October 2009 until March 2010. In May 2010, he began working for Ohio Management Services as a consultant earning \$90,000/year. He was hired as a full-time employee by that firm in May 2010, and still earns the same rate of pay. Meanwhile, Renay earned about \$7,000 in 2009. She earned approximately \$17,500 in 2010 from her two jobs as a cosmetologist and receptionist at a veterinary clinic. The magistrate ordered that, beginning on May 12, 2010, *in lieu of direct payments of spousal support*, Jason would pay the mortgage (\$1,378/month), real estate taxes (\$280/month), and line of credit (\$65/month), for a total monthly payment of \$1,723. Further, if the marital residence was sold, Jason would pay spousal support of \$1,550/month. The magistrate found that Jason's obligation to make mortgage payments or spousal support would "continue until May 31, 2013, as agreed upon in the consent entry." Further, spousal support would terminate on the death of either party, Renay's remarriage, or her cohabitation with an unrelated male. Also, consistent with the court's prior entries, the magistrate ordered that the court would retain jurisdiction to modify the *amount* of spousal support.

{¶9} Thus, pursuant to the trial court's retention of jurisdiction regarding modification of spousal support in the divorce decree and consent entry, the magistrate modified the *amount* of spousal support, but acknowledged that the *duration* of spousal support was fixed by the court's prior judgments and not subject to modification.

{¶10} Renay filed objections and supplemental objections to the magistrate's decision. The court entered judgment on August 11, 2011. After considering Renay's objections, the court overruled each of them, except her objection that, rather than simply reduce the monthly obligation during the originally-ordered four-year term, the

magistrate should have extended the award of spousal support beyond that term. The trial court modified the divorce decree to require Jason to pay \$1,723/month in spousal support, effective January 1, 2011, subject to further order of the court. The court ordered that these payments would terminate upon the death of either party, Renay's remarriage, or her cohabitation with another male. Thus, while the court granted Jason's motion to modify spousal support by reducing the monthly payment, the court required Jason to pay spousal support to Renay indefinitely without reference to the previously-ordered and agreed-upon four-year fixed term of spousal support as set forth in the divorce decree and consent entry.

{¶11} Jason appeals the trial court's judgment, asserting one assignment of error, as follows:

{¶12} "The trial court erred when it ordered the appellant to pay spousal support to the appellee until the death of either party, appellee's remarriage, or appellee's cohabitation with an unrelated male when a prior final appealable consent judgment entry stated appellant would pay spousal support for a definite term."

{¶13} Jason argues that because the trial court had previously entered judgment awarding spousal support for a limited period of time and the court did not reserve jurisdiction to modify the duration of the spousal support obligation, the court did not have jurisdiction to enter its subsequent judgment awarding spousal support to Renay indefinitely. Thus, the only issue Jason raises on appeal is whether the trial court had jurisdiction to modify the duration of the spousal award beyond the fixed period established in the divorce decree and consent entry.

{¶14} Issues regarding the jurisdiction of the domestic relations court are reviewed de novo and, therefore, without deference to the trial court's determination. *Pyle v. Pyle*, 3d Dist. No. 1-06-25, 2007-Ohio-110, ¶8.

{¶15} In *Ressler v. Ressler*, 17 Ohio St.3d 17 (1985), the Supreme Court of Ohio addressed a trial court's jurisdiction to modify an award of spousal support made for a fixed period. In *Ressler*, prior to the expiration of the term, the defendant-wife applied to the trial court for an order extending the plaintiff-husband's alimony payments beyond the five years originally provided for in the parties' divorce decree. The husband contended that the trial court lacked jurisdiction to modify the decree. The trial court found that no jurisdiction to modify had been reserved. The Supreme Court of Ohio agreed, holding:

{¶16} [A] decreeing court does not have continuing jurisdiction to modify a sustenance alimony award that was made for a fixed period of years even though the award is subject to termination in the event of death, remarriage or cohabitation *unless the decreeing court expressly reserves jurisdiction to modify*. In so ruling we are promoting the concept that alimony decrees should possess a degree of finality and certainty. *Id.* at 18. (Emphasis added.)

{¶17} This court has repeatedly followed the Ohio Supreme Court's holding in *Ressler, supra*. *E.g., Nemeth v. Nemeth*, 11th Dist. No. 2008-G-2842, 2008-Ohio-4678, ¶5; *Link v. Link*, 11th Dist. No. 96-L-067, 1997 Ohio App. LEXIS 2680, *10 (June 20, 1997). The General Assembly codified the Supreme Court's holding in *Ressler* in R.C. 3105.18(E). *Nemeth, supra*.

{¶18} Here, the divorce decree and consent entry limited the award of spousal support to a four-year period. Further, the trial court expressly reserved jurisdiction to modify only the amount of spousal support, not the duration of the spousal-support award. Therefore, the issue before us is whether the court's express reservation of jurisdiction to modify *the amount* of spousal support constitutes an express reservation of jurisdiction to also modify *the duration* of the spousal support award. For the reasons discussed below, we hold that it does not.

{¶19} An express reservation of jurisdiction to modify the duration of an award of spousal support can be accomplished in a number of ways. For example, the trial court can explicitly state that it expressly reserves jurisdiction to modify the award as to duration and amount. *Stolar v. Stolar*, 6th Dist. No. L-96-023, 1997 Ohio App. LEXIS 311, *3-*4 (Jan. 31, 1997). In addition, the Sixth District in *Meinke v. Meinke*, 56 Ohio App.3d 171, 173 (6th Dist.1989), held that a trial court expressly reserves jurisdiction to modify both the amount and duration of an award of spousal support where the award is expressly made terminable for a number of years or "until * * * further order of the * * * Court." Although this is not the only language that will reserve the trial court's jurisdiction to modify the duration of the award, "there must be some explicit language that makes reference to the term or duration of the award." *Stolar, supra*, at *4.

{¶20} In *Stolar*, the Sixth District considered reservation language strikingly similar to that contained in the instant divorce decree and consent entry. In *Stolar*, the divorce decree provided for spousal support to be paid by the husband to the wife for a period of seven years beginning and ending on dates certain. The decree provided that *the monthly amount of the spousal support* was subject to modification at any time, but

the court did not retain jurisdiction to modify the duration of the spousal support award. The wife moved to modify spousal support so as to extend the payments beyond the termination date. The trial court denied the motion to modify. The Sixth District affirmed, stating that, although the order provided for termination at an earlier date if one of the enumerated contingencies occurred, e.g., either party's death or the wife's remarriage, there was a "complete absence * * * of any language that could even arguably constitute an express reservation of jurisdiction to extend the duration of the award beyond [the termination date]." *Id.* at *4. The wife argued that the trial court expressly reserved jurisdiction to extend the termination date based on the following modification language of the support order: "It is further ordered that said * * * alimony monthly payments * * * shall be subject to modification by this Court * * *." The Sixth District held that this language by its very terms applied only to modification of the amount of the monthly payments. *Id.* at *5. The court held that because the reservation language failed to refer to, or to place any conditions on, the definite termination date, it could not be read to constitute an express reservation of jurisdiction to extend the duration of the award beyond the termination date. *Id.*

{¶21} The Sixth Appellate District reached the same conclusion when considering reservation language in a divorce decree that was broad enough to include all aspects of spousal support. In *Hasselbach v. Hasselbach*, 6th Dist. No. S-00-0004, 2000 Ohio App. LEXIS 5557 (Nov. 30, 2000), the divorce decree awarded spousal support to the wife for five years. One week before termination of the five-year period, the wife filed a motion to modify spousal support. The court increased the award, and ordered the husband to pay it for two more years. The husband moved to vacate the

order pursuant to *Ressler, supra*. The trial court denied the motion. The appellate court affirmed, holding that because the decree provided that the “court retains jurisdiction over the issue of spousal support,” the trial court expressly reserved jurisdiction to modify the spousal support award.” *Id.* at *5.

{¶22} Thus, when a divorce decree provides for a fixed period of spousal support for a number of years, the trial court expressly reserves jurisdiction to modify the duration of the award when: (1) the decree explicitly provides that the court reserves jurisdiction to modify the duration of the award, or when (2) the reservation language is so broad that it encompasses all aspects of spousal support, such as “the trial court reserves jurisdiction over spousal support” or “the court retains jurisdiction over the issue of spousal support.”

{¶23} Applying the foregoing principles to the instant case, the December 18, 2009 divorce decree provided that Jason would pay to Renay \$3,083.33 per month for spousal support for a fixed period of four years. The decree also provided that spousal support would terminate upon the death of either party, Renay’s remarriage, or her cohabitation with an unrelated male. The decree further provided: “The Court shall retain jurisdiction to modify *the amount* of support if the parties’ income changes and when the marital home is sold.” (Emphasis added.) These provisions were essentially repeated in the parties’ July 2, 2010 consent entry, which also specified that Jason’s support obligation was to begin on June 1, 2009 and terminate on May 31, 2013. The decree was thus terminable after a definite number of years on a date certain, May 31, 2013. While the decree provided for termination at an earlier date if one of the enumerated contingencies occurred, e.g., either party’s death, there was no language

that could constitute an express reservation of jurisdiction to extend the duration of the award beyond May 31, 2013. The court's reservation of jurisdiction was limited in nature, explicitly referring only to its retention of jurisdiction to modify the *amount* of support. The reservation of jurisdiction did not make any reference to or place any conditions on the definite termination date. It thus cannot be read to constitute an express reservation of jurisdiction to extend the duration of the award beyond May 31, 2013. *Stolar, supra*.

{¶24} Renay ignores the jurisdictional issue in her brief, and simply argues that the change in circumstances referenced by Jason in his motion to modify, i.e., the decrease in his income, warranted an extension of the spousal support award. She argues that pursuant to *Mencini v. Mencini*, 11th Dist. No. 2009-G-2930, 2010-Ohio-2409, a change in circumstances authorizes the extension and modification of spousal support. However, *Mencini* is inapposite because in that case the parties agreed that “the trial court expressly reserved jurisdiction to modify spousal support in the divorce decree.” *Id.* at ¶27. Renay further argues that, pursuant to *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, a prior order of spousal support may be modified when the court finds a substantial change in circumstances. However, *Mandelbaum* is also inapposite because the divorce decree in that case did not limit the duration of the spousal support order to a definite period, and the decree itself provided that spousal support was “subject to the ongoing and continuing jurisdiction of [the court].” *Id.* at ¶6. Without jurisdiction to modify the duration of spousal support, whether a substantial change in circumstances occurred is simply not germane.

{¶25} Next, Renay does not take issue with the trial court's final judgment. Instead, she argues that the magistrate abused her discretion by not considering the issues Renay raised in the objections she subsequently filed. However, the final judgment in this case is the trial court's judgment ruling on Renay's objections to the magistrate's decision, not the magistrate's decision itself. *In re Strickler*, 9th Dist. Nos. 08CA009375 & 08CA009393, 2008-Ohio-5813, ¶10; *Flax v. Flax*, 2d Dist. No. 97-CA-63, 1998 Ohio App. LEXIS 443, *6 (Feb. 13, 1998). Since a magistrate is not a constitutional or statutory court, his or her decisions are not final, appealable orders. See *Chavez v. Sanderson-Chavez*, 11th Dist. No. 98-L-037, 1999 Ohio App. LEXIS 1432, *12 (Mar. 31, 1999). As an adjunct of the court, the magistrate's decision is merely a recommendation, which, as pertinent here, the trial court did not accept. Consequently, we do not have jurisdiction to consider Renay's challenge to the magistrate's decision, which is simply not pertinent to this appeal.

{¶26} Next, Renay argues that in granting Jason's motion to modify spousal support, the court was seeking to balance the equities in light of Jason's reduced income. While we agree that the court was most likely attempting to mitigate Jason's support obligation by lowering his monthly payment, because the court did not reserve jurisdiction to modify the duration of spousal support, the court did not have jurisdiction to make the spousal support award indefinite.

{¶27} It also bears noting that in his motion to modify, Jason had requested a reduction in "the award of spousal support." By reducing the monthly payment but making the award indefinite, the court actually increased his burden by potentially making him liable to pay spousal support to Renay for the rest of her life.

{¶28} We therefore hold that, while the court retained jurisdiction to modify the amount of spousal support, it did not reserve jurisdiction to modify the duration of the award. Therefore, while the court had jurisdiction to modify the amount of spousal support, it did not have jurisdiction to alter its duration. We therefore hold that the trial court erred in finding it had jurisdiction to modify the spousal-support award beyond the definite termination date set forth in the decree and consent entry. Because the court's judgment reducing the amount of the spousal support payments rested on the incorrect premise that it had continuing jurisdiction to extend the spousal support award indefinitely, we remand this matter for further proceedings on Renay's objections to the magistrate's decision. On remand, the trial court shall be guided by our holding that, while the parties' divorce decree and consent entry reserved jurisdiction to modify the amount of spousal support, that reservation did not include jurisdiction to modify the duration of the award.

{¶29} For the reasons stated in this opinion, it is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

TIMOTHY P. CANNON, P.J., concurs,

DIANE V. GRENDALL, J., concurs with a Concurring Opinion.

DIANE V. GRENDALL, J., concurs with a Concurring Opinion.

{¶30} I concur with the majority’s reversal of the trial court’s judgment extending the duration of the spousal support payments to Renay Kopczak. I write separately, however, to more thoroughly address Renay’s argument that such a reversal would lead to an inequitable result.

{¶31} In the present matter, Renay asserts that the trial court, by extending the *duration* of the support to be paid, was balancing the equities, since the *amount* to be paid had been decreased. Therefore, it is necessary to consider whether a potentially inequitable result in this case justifies the trial court’s modification of the duration of the spousal support payments, even though, as discussed in the majority opinion, the trial court failed to reserve the jurisdiction to make such a modification.

{¶32} Regarding the issue of equity, in matters relating to spousal support, the “trial court is provided with broad discretion in deciding what is equitable upon the facts and circumstances of each case.” *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990); *Brys v. Brys*, 11th Dist. No. 2010-T-0113, 2012-Ohio-524, ¶ 33. This court, and others, have expressed concerns about the importance of achieving an equitable result in domestic relations cases. See *Zamos v. Zamos*, 11th Dist. No. 2002-P-0085, 2004-Ohio-2310, ¶ 16-17 (a court must consider equity in making child support determinations); *Edminister v. Edminister*, 9th Dist. No. 25428, 2011-Ohio-1899, ¶ 45 (equity and justice supported the trial court’s decision).

{¶33} However, while equity is an important concern, various appellate courts have also held that equitable concerns must be considered in conjunction with the law, especially when that law is clear. *In re Barone*, 11th Dist. No. 2004-G-2575, 2005-Ohio-4479, ¶ 19 (citations omitted) (“equity follows the law, and cannot be invoked to destroy

or supplant a legal right”); *Caldwell v. Caldwell*, 12th Dist. Nos. CA2008-03-021 and CA2008-02-019, 2009-Ohio-2201, ¶ 80 (even when “obvious concerns over equity emerge,” the appellate court is “not in the position to rewrite * * * state law to permit a more equitable result”); *Bagley v. Bagley*, 181 Ohio App.3d 141, 2009-Ohio-688, 908 N.E.2d 469, ¶ 33 (2nd Dist.) (it is “fundamental that equity follows the law”). “[W]hile it may be tempting to decide [a] case on subjective principles of equity and fundamental fairness, this court has a greater obligation to follow the law.” *State ex rel. Schwaben v. School Emps. Retirement Sys.*, 76 Ohio St.3d 280, 285, 667 N.E.2d 398 (1996).

{¶34} Although equity is a concern for this court, the law supports a holding that the trial court was required to retain jurisdiction in order to be permitted to modify the duration of spousal support or consider the equities of such a modification. Since the trial court failed to reserve jurisdiction, this court must follow the law and cannot consider whether it is equitable for the amount of support to be decreased without a corresponding increase in the duration of payment. See *Vengrow v. Vengrow*, 9th Dist. No. 24907, 2010-Ohio-2568, ¶ 22-24 (where the wife asserted that the trial court was attempting to achieve equity by spreading the modification of the husband’s decreased spousal support obligation over an extended period of months, the appellate court held that, regardless of the equitable concerns, the trial court’s failure to reserve jurisdiction to alter the duration of the support warranted reversal).

{¶35} For the foregoing reasons, I concur in the majority’s decision to reverse the trial court’s judgment modifying the duration of the spousal support award.