

[Cite as *Weddington v. Weddington*, 2010-Ohio-4967.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BERNADINE R. WEDDINGTON	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 10 CA 00023
DANIEL DOUGLAS WEDDINGTON	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Licking County Court of
Common Pleas, Domestic Relations
Division, Case No. 99-DR-00061

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: October 4, 2010

APPEARANCES:

For Appellant:

VICKY M. CHRISTIANSEN
172 Hudson Ave.
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For Appellee:

PHILIP L. PROCTOR
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Delaney, J.

{¶1} Defendant-Appellant, Daniel Weddington, appeals the February 11, 2010 judgment entry of the Licking County Court of Common Pleas, Domestic Relations Division.

STATEMENT OF THE FACTS AND CASE

{¶2} Defendant-Appellant, Daniel Weddington and Plaintiff-Appellee, Bernadine R. Weddington were married on August 30, 1969. Two children were born as issue of the marriage and are now emancipated. Appellee filed a complaint for divorce on January 27, 1999. Appellant filed an answer and cross-complaint.

{¶3} The matter came on for hearing on September 29, 2000, before a magistrate. The magistrate issued his decision on February 12, 2001. Among the issues the magistrate was presented with, and relevant to this appeal, was the valuation of a business Appellant had an interest in, namely Mid-Con Petroleum Company, aka Mid-Con Energy Co., Inc. ("Mid-Con"). Mid-Con is an oil and gas developer that sells investment packages to investors to drill wells and Mid-Con manages the wells. Appellant was president of Mid-Con, managed the day-to-day operations, and earned a salary. Appellant also took gross distributions from Mid-Con in addition to his salary. Mid-Con was organized as a corporation, but the corporation had not issued stock and it did not have an established board, but rather operated more as a partnership with his business partner.

{¶4} Before the divorce hearing, the parties agreed that an accounting firm would determine a fair market value of Mid-Con and determine Appellant's interest in the corporation. An accountant from the firm testified at the hearing that the firm was

unable to provide a conclusion of the value of the business due to inconsistencies in the record keeping and the unreliability of the financial information. In the magistrate's opinion, the magistrate noted the accountant testified that the gross income of the business had decreased significantly from \$2.9 million in 1996 to \$889,000 in 1999. Appellee brought forth evidence to show that in 1997, Appellant's income was in excess of \$180,000, with a majority of the income coming from Mid-Con.

{¶5} Appellant had interests in other business entities. Appellant owned 100% of Weddington and Company, a consulting entity. He owned one-half of Weddington and Williams, a business entity that owned the building that housed another business interest of Appellant, Weddington, Rust, and Williams, Co., Inc. Weddington, Rust, and Williams, Co., Inc. operated as an accounting firm and Appellant owned 75% of that business. In 1997, Appellant also taught part-time at Ohio State University and Ohio University, earning \$5,000.

{¶6} The magistrate found that it was unable to fully determine Appellant's income from his business ventures due to Appellant's evasiveness and lack of credibility in reporting his income to the court. Appellant's income affidavit showed he made only \$35,510. The magistrate stated, "[T]he defendant's actions have made it impossible to place a current value on Mid-Con. The books are not trustworthy and the misrepresentations to investors have potentially rendered the company valueless to third party purchasers but it remains a significant income producer for Dan Weddington." (Magistrate's Decision, Feb. 12, 2001).

{¶7} The magistrate awarded Appellee a distributive award due to Appellant's financial misconduct in the form of dissipation, concealment, and fraudulent disposition of assets. The magistrate held,

{¶8} "The misconduct consists of the over-sale of some gas wells by Mid-Con, the failure to show all funds received by the defendant from Mid-Con as income to the defendant, the end-of-year corrections to the books which wiped out hundreds of thousands of dollars off the plus side of Mid-Con's balance sheet, the execution of promissory notes by third parties when it is questionable that an actual debt exists, and the statement that the defendant is owed thousands of dollars by these corporate entities with very little, if any documentary support."

{¶9} Appellee was awarded spousal support in the amount of \$900.00 per month. The trial court awarded the amount without any time limitations or qualifications. The trial court retained jurisdiction to modify the award for any change of circumstances.

{¶10} At the time of the divorce, Appellee was a full-time teacher and head of the math department at Newark High School. Her gross salary for the 2000-2001 school year was \$47,747 plus \$1,210 as the math department head.

{¶11} In finding that Appellee was entitled to spousal support and a distributive award, the magistrate made the following statement:

{¶12} "Whether the drop in Mid-Con's present revenues is caused by outside factors or the defendant's ongoing domestic case, the defendant has shown a remarkable ability to generate a good income, far greater than the plaintiff's ability. * * * The Magistrate will take notice of the fact that natural gas prices are going skyrocketing and the potential for Mid-Con should be going through the roof. This is based further on

the lamentations of Mr. Weddington about how low gas prices were causing him problems in the past year or so.”

{¶13} Appellant filed objections to the magistrate’s decision. The trial court noted that in determining Appellant’s objections, “the Court is mindful of efforts to obtain an accurate financial picture of defendant’s ventures and actual income. The defendant’s efforts to thwart an accurate summary is verified throughout the transcript and his own testimony is characteristic of his efforts. It is very difficult for this Court to sympathize with defendant’s assertions of financial plight given the evidence of his manipulations of funds among the entities he controls. The record repeatedly reflected either a concerted effort to create an unfathomable maze of transactions or a manifestation of such sloppy or negligent accounting practices that either conclusion warranted a finding of financial misconduct that requires a distributive award.”

{¶14} The trial court issued the final divorce decree on December 4, 2001.

{¶15} Appellant stopped paying spousal support in September 2008. On October 22, 2008, Appellant filed a motion to terminate or reduce his spousal support obligation. In support of his motion, Appellant stated that he no longer received income from Mid-Con due to an injunction from the Justice Department prohibiting Mid-Con from offering investment opportunities in oil and gas production and an investigation of Mid-Con’s business practices by the Justice Department and the Internal Revenue Service. He stated that his business partner had excluded Appellant from access to Mid-Con. The resulting investigation had a detrimental effect on Appellant’s accounting firm, with clients who invested in Mid-Con leaving the firm.

{¶16} After a hearing on the motion before a magistrate, the magistrate issued his decision on March 23, 2009. The magistrate overruled Appellant's motion for termination or reduction of spousal support, finding that Appellant's loss of income from Mid-Con due to the injunction and investigation into Mid-Con's business practices were circumstances that were contemplated by the trial court at the time of the divorce. The magistrate stated that the trial court "was well aware of the shaky structure of this house of cards at the time of the divorce. It is not a surprise that the cards are now falling and the house is crumbling. The fact that the defendant's business practices have caught up with him at this time is one that the Magistrate finds and believes was clearly within the contemplation of the Trial Court when it entered its divorce decree in this matter."

{¶17} The magistrate further reviewed the R.C. 3105.18(C)(1) factors and found that continuing spousal support at \$900 per month was reasonable.

{¶18} Appellant filed objections to the Magistrate's Decision. The trial court overruled Appellant's objections by opinion on January 9, 2010 and judgment entry on February 11, 2010.

{¶19} It is from this decision Appellant now appeals.

{¶20} Appellant raises two Assignments of Error:

{¶21} "I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT TERMINATE SPOUSAL SUPPORT WHERE APPELLANT'S CIRCUMSTANCES HAD SUBSTANTIALLY CHANGED, AND THAT CHANGE WAS NOT CONTEMPLATED BY THE TRIAL COURT AT THE TIME OF THE ORIGINAL DIVORCE DECREE.

{¶22} “II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT TERMINATE SPOUSAL SUPPORT WHERE TERMINATION WAS WARRANTED UNDER R.C. 3105.18, AND THE CONTINUED PAYMENT CONSTITUTES AN EXTREME FINANCIAL HARDSHIP FOR APPELLANT.”

I., II.

{¶23} We will consider Appellant’s Assignments of Error together because they are interrelated. Appellant argues the trial court abused its discretion when it failed to reduce or terminate Appellant’s spousal support obligation due to Appellant’s involuntary reduction in income. We disagree.

{¶24} Modifications of spousal support are reviewable under an abuse of discretion standard. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 541 N.E.2d 1028. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140. The burden of establishing the need for modification of spousal support rests with the party seeking modification. *Tremaine v. Tremaine* (1996), 111 Ohio App.3d 703, 676 N.E.2d 1249.

{¶25} R.C. 3105.18(E) governs the trial court's consideration in modifying an existing spousal support order. The statute provides in relevant part:

{¶26} “(E) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, and before January 1, 1991, or if a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or

dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:

{¶27} “(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.”

{¶28} In this case, the original decree provides continuing jurisdiction on all aspects of spousal support.

{¶29} R.C. 3105.18(F) defines a change in circumstances as including any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses.

{¶30} Although R.C. 3105.18(F) sets forth a partial listing of what can be considered as a change in circumstances for purposes of establishing trial court jurisdiction, it does not alter the requirement that a trial court must find a substantial change in circumstances before modifying a prior order for spousal support. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 905 N.E.2d 172, 2009-Ohio-1222, ¶ 1 of the syllabus. A trial court lacks jurisdiction to modify a prior order of spousal support unless the decree expressly reserved jurisdiction to modify and unless the court finds (1) that a substantial change in circumstances has occurred and (2) that the change was not contemplated at the time of the original decree. *Id.* at syllabus 2.

{¶31} R.C. 3105.18 does not require the lower court to make specific findings of fact regarding spousal support awards. The factors a court considers in making its original award of spousal support are set out in R.C. 3105.18(C)(1):

{¶32} “(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;

{¶33} “(b) The relative earning abilities of the parties;

{¶34} “(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶35} “(d) The retirement benefits of the parties;

{¶36} “(e) The duration of the marriage;

{¶37} “(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

{¶38} “(g) The standard of living of the parties established during the marriage;

{¶39} “(h) The relative extent of education of the parties;

{¶40} “(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

{¶41} “(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

{¶42} “(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will

be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

{¶43} “(l) The tax consequences, for each party, of an award of spousal support;

{¶44} “(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶45} “(n) Any other factor that the court expressly finds to be relevant and equitable.”

{¶46} As stated above, a trial court lacks jurisdiction to modify a prior order of spousal support unless the decree expressly reserved jurisdiction to modify and unless the court finds (1) that a substantial change in circumstances has occurred and (2) that the change was not contemplated at the time of the original decree. *Mandelbaum, supra*.

{¶47} In this case, the trial court determined that Appellant's income was reduced since the Divorce Decree. The trial court applied the next step of the analysis to determine whether the reduction in Appellant's income constituted a substantial change in circumstances. In the Divorce Decree, the trial court found Appellant had engaged in financial misconduct in relation to Mid-Con and ordered a distributive award to Appellee. In its judgment entry denying modification, the trial court relied on the misconduct previously displayed by Appellant. The trial court found that the reduction in income from Mid-Con's cessation of business due to the intervention of the Justice Department and Internal Revenue Service was due to Appellant's voluntary actions in the poor fiscal management of Mid-Con.

{¶48} This Court stated in *Cesa v. Cesa* (Nov. 29, 2001), Coshocton App. No. 01 CA 12, that, “[a]lthough a change of circumstances may be considered in a modification request, it must not be purposely brought about by the complaining party. *Berns v. Berns* (April 18, 1988), Stark App. No. CA-7322, unreported, at 2, citing *Bauer v. Bauer* (April 15, 1982), Montgomery App. No. 7596, unreported.”

{¶49} The record in this case clearly details the difficulty the trial court had in determining Appellant’s income from Mid-Con because of Appellant’s questionable business practices and bookkeeping at Mid-Con. An accounting firm could not give a valuation of the business due to the dubious financial records provided by Appellant. Appellant was in charge of the day-to-day operations of Mid-Con and the trial court imputed any wrongdoing of Mid-Con that caused the Justice Department to intervene on Appellant’s involvement in that business.

{¶50} The trial court next found that assuming Appellant’s reduction of income from Mid-Con was the result of a substantial change of circumstances, the change was contemplated at the time of the divorce. The cause of the reduction in Appellant’s income from Mid-Con was the investigation into Mid-Con’s business practices by the Justice Department and Internal Revenue Service and the Justice Department injunction prohibiting Mid-Con from offering any investment opportunities. The trial court found that the actions of the Justice Department and Internal Revenue Service were a result of Appellant’s business practices and Appellant’s business practices were in contemplation of the trial court at the time of the original Divorce Decree.

{¶51} It further found that the income from Mid-Con had varied over the years due to the fluctuating natural gas prices and these facts were discussed in the Divorce Decree.

{¶52} We agree that all these matters were considered when the trial court originally attempted to discern Appellant's income from Mid-Con.

{¶53} It is Appellant's burden to establish the need for modification. In this case, the trial court found Appellant lacked credibility on multiple levels concerning Mid-Con. Upon our review of the record, we find the trial court did not abuse its discretion in finding that there was no substantial change in Appellant's income due to Appellant's voluntary conduct and any change in circumstances were contemplated at the time of the original decree.

{¶54} Appellant's first Assignment of Error is overruled.

{¶55} Appellant argues in his second Assignment of Error that the trial court erred in not terminating Appellant's spousal support obligation after considering the R.C. 3105.18(C)(1) factors and the continued payments constitute a financial hardship on Appellant.

{¶56} A trial court need not acknowledge all evidence relative to each and every factor listed in R.C. 3105.18(C), and we may not assume the evidence was not considered. *Barron v. Barron*, Stark App. No.2002CA00239, 2003-Ohio-649 at ¶ 25. The statute directs the court to consider all fourteen factors, and a reviewing court will presume the trial court did so absent evidence to the contrary. The court must only set forth sufficient detail to enable a reviewing court to determine the appropriateness of the award. See, e.g., *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 518 N.E.2d 1197.

This Court reviews the trial court's determination as to spousal support under an abuse of discretion standard of review.

{¶57} The trial court found the parties had a marriage of long duration for 22 years. Appellant is 61 years old and Appellee is 60 years old.

{¶58} As stated above, Appellant argues that he receives no income from Mid-Con. At the modification hearing, Appellant testified that in 2008, Appellant earned \$12,000 from his accounting firm and he receives a monthly income of \$819. He is paid \$551 per month from his other partners in the accounting firm. Appellant is also compensated for teaching college courses in the amount of \$1092 per month. Appellant presented evidence that he is involved in other business ventures, but takes a loss from each business. Appellant currently resides with his girlfriend, who is employed full-time, and his daughter from another relationship. His monthly expenses are \$5,000. He recently made improvements to his home. He went on a leisure vacation in 2008. He liquidated an account to pay a \$30,000 retainer fee to his attorney to represent him in connection with the Mid-Con investigation.

{¶59} Appellee currently earns \$65,900 as a full-time public school teacher. She has a retirement account with STRS for \$275,000 and a TIAA-Cref account of \$3,000.

{¶60} The trial court considered the totality of the circumstances and determined that Appellant failed to meet his burden that a modification was necessary. The trial court specifically found that Appellant lacked credibility as to the amount of his income he was currently receiving. "If the record shows the court weighed the evidence, determined the credibility of the witnesses, and arrived at an estimate of a party's income which is not unreasonable, arbitrary, or unconscionable, this court may not

reverse.” *Cole v. Cole*, Stark App. No. 2006CA00190, 2007-Ohio-54, ¶23 citing *Showalter v. Showalter*, (November 25, 1996), Clermont Co App. No. CA95-11-082.

{¶61} Accordingly, Appellant’s second Assignment of Error is overruled.

{¶62} The judgment of the Licking County Court of Common Pleas, Domestic Relations Division is affirmed.

By: Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

PAD:kgb

[Cite as *Weddington v. Weddington*, 2010-Ohio-4967.]

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BERNADINE R. WEDDINGTON	:	
	:	
	:	
Plaintiff-Appellee	:	
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-vs-	:	JUDGMENT ENTRY
	:	
DANIEL DOUGLAS WEDDINGTON	:	
	:	
	:	
	:	Case No. 10 CA 00023
Defendant-Appellant	:	

For the reasons stated in our accompanying Opinion on file, the judgment of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN