

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Kimberly E. Scheid

Court of Appeals No. E-13-012

Appellee

Trial Court No. 2008 DR 080

v.

Jeffrey A. Scheid

DECISION AND JUDGMENT

Appellant

Decided: October 4, 2013

* * * * *

Kenneth E. Bogden, for appellee.

Elizabeth F. Wilber, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, Domestic Relations Division, finding that appellant had not established the requisite change in circumstances in support of a requested reduction in spousal support. In conjunction with this, the trial court found appellant in contempt for his failure to pay

the bulk of his spousal support obligations in 2010 through 2012. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jeffrey Scheid, sets forth the following four assignments of error:

No. 1. The trial court erred in finding that there was no substantial change in circumstances for consideration of defendant/appellant's motion for modification of spousal support even though the personal income stipulated to by the parties of defendant/appellant had fallen nearly 60% since the date of divorce.

No. 2. The trial court erred in determining that an insufficient change in circumstances exists because the change, specifically the "financial uncertainty so far as the future of defendant's business and the defendant's future income", was contemplated at the time of the original decree. The court stated that "since at the time of the divorce it was contemplated that there would be fluctuation in the defendant's income, any such fluctuation in defendant's income was anticipated at the time of the divorce and is not a sufficient fact to modify the amount of spousal support pursuant to the authority of Mandelbaum."

No. 3. The trial court erred in finding appellant in contempt for failing to pay spousal support.

No. 4. The trial court erred in ordering jail time and purge conditions for the contempt.

{¶ 3} The following undisputed facts are relevant to this appeal. On May 16, 1987, the parties to this case were married in Sandusky, Ohio. In January 2010, the parties divorced. At the time the divorce was filed, appellant owned a 33 percent stake in the Scheid Concrete Company. Simultaneous with the finalization of the divorce, appellant entered into an agreement with his former business partners through which appellant became the sole, 100 percent owner of Scheid Concrete.

{¶ 4} In 2009, prior to finalization of the divorce, when appellant owned a 33 percent stake in the company and the company reported \$401,646 in income, appellant's reported personal income from the company constituted approximately \$80,202 per year. In the two years subsequent to the divorce, after appellant's ownership stake increased to 100 percent and after annual company income has risen from \$401,646 to \$524,232, appellant's claimed personal income from the company as its sole owner declined 62 percent to \$29,946.90.

{¶ 5} In 2010, during the first year of the applicability of the terms of the divorce decree, appellant paid approximately 36 percent of his monthly spousal support obligations to appellee. In 2011, appellant's noncompliance with his spousal support obligations worsened, as reflected by appellant's payment of just 16 percent of his monthly spousal support obligation to appellee. In 2012, appellant paid no spousal support to appellee. Notably, during this same time frame, appellant became the sole owner of a family business at a time when the business experienced revenue growth of nearly 33 percent. In addition to the failure to pay spousal support, appellant had also

executed a promissory note to appellee of approximately \$57,000 as part of the divorce decree property settlement. No promissory note payments have been made by appellant to appellee.

{¶ 6} On September 16, 2011, appellant filed a motion to modify spousal support. Appellant sought a reduction in spousal support due to his claimed reduction in income despite becoming the sole owner of a growing company. On October 3, 2011, a motion to show cause was filed by appellee based upon a spousal support arrearage approaching \$25,000. The matter was continued on several occasions due to discovery requests by appellee in connection to appellant's business records. Appellant ultimately filed a motion for a protective order regarding his business financial records. By the fall of 2012, the arrearage exceeded \$40,000.

{¶ 7} On October 10, 2012, appellant filed his proposed findings of fact and conclusions of law. On October 31, 2012, appellee filed a trial brief and appellant filed a reply to the trial brief. On November 5, 2012, appellee filed a response to appellant's reply. On January 10, 2013, the magistrate's findings of fact and conclusions of law were filed.

{¶ 8} In a ruling denying appellant's motion to modify spousal support, the magistrate determined that the substantial change in circumstances so as to warrant a reduction in spousal support was not established by appellant. On the contrary, the ruling delineated numerous facts that were contradictory to the claimed change in circumstances. Significantly, the magistrate's report emphasized various contradictions

between appellant's business financial documentation and appellant's claimed steep drop in income from his business.

{¶ 9} The magistrate noted that at the same time appellant's ownership stake in the company tripled to 100 percent and the revenue for the company rose by nearly 33 percent, appellant's reported personal income from the solely owned company "mysteriously" dropped sharply, from \$80,202 in 2009 before the divorce to \$29,946 in 2011 after the divorce. Company revenue jumped from \$401,646 to \$524,232 during the same span of time.

{¶ 10} The magistrate found these contradictory trends to be "curious and significant." Appellant attempts to attribute the claimed loss in personal income to the overall economic climate by stating, "It is doubtful that defendant/appellant could have divined the economic forecast and the severity of the impact of his particular business in 2009." That rationale is curious given that the records actually reflect significant growth, not significant decline, in appellant's company after 2009. The trial court was similarly not persuaded. The magistrate concluded in relevant part, "Once again, there is no explanation provided for the same and the significance of this 'mystery' is that it demonstrates there was not a change in circumstances which will allow the Court to modify the spousal support as requested."

{¶ 11} In conjunction with denying the motion for spousal support modification, the magistrate went on to further find that appellant had accumulated approximately \$40,000 in arrearages on spousal support as of August 31, 2012. The record reflects that

appellant made no payments whatsoever in 2012. Appellant also had made no payments at any time on a promissory note that he executed in the course of the underlying divorce decree.

{¶ 12} The trial court noted the significance of the records of the Erie County Department of Jobs and Family Services reflecting that appellant had “virtually ignored” his spousal support obligations during a span of time in which he was able to fully comply with his child support obligations. The record reflects, and the trial court emphasized, that despite appellant’s full compliance with his \$633.72 monthly child support obligation, upon termination of the child support obligations on June 1, 2011, payments were not forthcoming towards appellant’s ongoing failure to pay spousal support. The record reflects that appellant claimed a steep decline in income from a company he solely owned at a time when the company revenue grew sharply to nearly \$525,000. In response to appellee’s position that appellant intentionally crafted the financial records of his solely owned business to appear to have no income and avoid spousal support, appellant responded, “there is no evidence that defendant/appellant purposefully brought about the loss of business and decline of his company.” The trial court found that appellant failed to objectively establish a change in circumstance that would warrant a reduction in appellant’s spousal support obligation.

{¶ 13} Accordingly, the magistrate denied appellant’s request to reduce his spousal support obligation. The magistrate concluded and articulated in clear detail that

it was not warranted as appellant's business records reflected a substantial increase in revenue and gross profit in a company solely owned by appellant.

{¶ 14} In addition, the trial court found appellant in contempt of court for failing to make any payments at any time on his promissory note obligation to appellee that was incorporated into the divorce decree, in failing to make most of his spousal support payments in 2010 and 2011, and in failing to make any spousal support payments in 2012. Appellant was ordered to serve five days of incarceration, to be suspended in full upon compliance with enumerated purge conditions. The purge conditions included making the payment of current spousal support obligations commencing on February 1, 2013, with an additional \$300 to be paid per month towards the significant spousal support arrearage, making the current promissory note payments, and paying costs and fees.

{¶ 15} On January 24, 2012, appellant filed his objections to the magistrate's finding of facts and conclusions of law. On February 26, 2013, the trial court adopted the magistrate's decision. This appeal ensued.

{¶ 16} In the first two assignments of error, appellant disputes the trial court's related determinations that the requisite substantial change in circumstances to warrant a reduction in spousal support was not shown and, accordingly, the denial of appellant's motion to reduce spousal support.

{¶ 17} It is well-established pursuant to *Mandelbaum v Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, 905 N.E.2d 172, that a trial court may not modify a prior

spousal support order unless the court determines that a substantial change of circumstances has occurred and that the change of circumstances was not contemplated by the parties at the time of the original divorce decree. *Mandelbaum* at paragraph two of the syllabus.

{¶ 18} We have carefully scrutinized and considered the record of evidence in this matter, paying particular attention to all evidence connected to appellant's claimed adverse change in circumstances as relevant to his requested reduction in the amount of his spousal support obligation. The record clearly reflects that appellant failed to furnish any objective, compelling evidence to explain the claimed precipitous drop in personal income from a company solely owned by him simultaneous to the company experiencing significant revenue increases. As was the case with the trial court, we are similarly not persuaded by appellant's claims.

{¶ 19} The record reflects that in 2009, prior to the divorce, appellant owned a 33 percent stake in a company with revenue \$401,646 and received reported personal income from the company of \$80,202. In January 2010, the divorce became final. In 2011, appellant now owned 100 percent of a company whose revenue had grown by nearly one-third to \$524,232. Despite this, appellant unconvincingly claimed that his personal income from the company had to be reduced by nearly two-thirds.

{¶ 20} The record shows that appellant has failed to furnish any objective or persuasive evidence in support of his motion to reduce his spousal support obligations. Appellant failed to establish a change in circumstances that could reasonably be

characterized as adverse so as to warrant a reduction in spousal support payment obligations. Given our finding that no showing of a substantial change of circumstances occurred, the second prong of consideration regarding whether a change was contemplated at the time of the original the divorce decree becomes moot.

{¶ 21} Because we find that appellant failed to demonstrate a change in circumstances in support of his motion for a reduction in spousal support payment obligations, such that it could negate appellant's contempt status, we simultaneously conclude that the trial court properly found appellant to be in contempt of court for making no payments on the promissory note obligation portion of the divorce decree, and for accumulating approximately \$40,000 in spousal support arrearages. Likewise, we find no impropriety in the purge conditions that require appellant to commence promissory note payments, commence spousal support payments, pay \$300 per month towards the arrearage, pay \$250 in attorney's fees, and pay costs in order to comply and avoid serving the suspended term of five days of incarceration. Wherefore, we find appellant's first and second assignments of error not well-taken.

{¶ 22} In appellant's third and fourth assignments of error, he again claims that the trial court erred in finding him in contempt and in setting purge conditions in conjunction with the disputed contempt finding. We note that these separately stated assignments are substantively subsumed by our consideration of the first two assignments of error.

{¶ 23} As stated above, the record of evidence in this matter clearly reflects that during a span of time in which appellant's ownership portion of his business went from

33 percent to 100 percent, the revenue of that business increased by nearly one-third, and appellant fully and timely made child support payments, appellant nevertheless made no payments on his promissory note obligation to appellee and made virtually no spousal support payments to appellee.

{¶ 24} Appellant unconvincingly claimed a two-thirds drop in personal income from a company whose revenue increased by one-third during a span of time in which appellant's ownership portion went from 33 percent to 100 percent. There is ample evidence in support of the contempt finding and in support of the standard purge conditions established in connection to same. We find appellant's third and fourth assignments of error are not well-taken.

{¶ 25} Wherefore, the judgment of the Erie County Court of Common Pleas, Domestic Relations Division, is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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