

[Cite as *Rutledge v. Johns*, 2010-Ohio-6472.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94483

MICHAEL RUTLEDGE

PLAINTIFF-APPELLANT

vs.

FLORENCE JOHNS

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-277524

BEFORE: Rocco, P.J., Blackmon, J., and Boyle, J.

RELEASED AND JOURNALIZED: December 30, 2010
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KENNETH A. ROCCO, P.J.:

{¶ 1} Plaintiff-appellant, Michael Rutledge, appeals from a domestic relations court order denying his motion to modify or terminate his spousal support obligations and granting defendant-appellee Florence Johns's motions to modify spousal support and for attorney's fees. Appellant argues that the trial court erred by failing to set a fixed termination date for spousal support and by increasing the amount of spousal support. For the reasons discussed below, we find the domestic relations court did not abuse its discretion by modifying the spousal support order. Therefore, we affirm.

Procedural History

{¶ 2} After almost 28 years of marriage, appellant and appellee were divorced on November 14, 2001 pursuant to an agreed judgment entry. Under the agreement, appellant was required to pay appellee \$1,000 per month in spousal support, subject to the death of either party or the remarriage of appellee. This order was expressly made subject to further court order.

{¶ 3} On March 31, 2009, appellant moved the court to modify and/or terminate his support obligation because he had been involuntarily laid-off from his employment. On September 4, 2009, appellee filed a motion to increase the spousal support award and requested an award of attorney's fees.

{¶ 4} The magistrate conducted a hearing on October 19, 2009. After the hearing, she entered a decision in which she concluded that the support order should be modified to require appellant to pay appellee \$1,500 per month in spousal support. The magistrate determined that appellant's income had more than doubled since the parties' divorce, to over \$100,000 per year. His expenses had remained the same since the divorce. He was living with his girlfriend and her daughter, and they were also contributing to the household expenses. Meanwhile appellee's income had remained at minimum wage, between \$13,000 and \$16,000. This income did not allow her to meet her monthly expenses of approximately \$2,260. Consequently,

the magistrate found, appellee was still in need of support. The magistrate also awarded appellee \$1,978 in attorney's fees.

{¶ 5} Appellant objected to the magistrate's decision. The court overruled the objections and adopted the magistrate's decision, granted appellee's motion to modify spousal support, increased the support award to \$1,500 per month, and awarded her attorney's fees of \$1,978. The court denied appellant's motion to modify or terminate the spousal support award.

Law and Analysis

{¶ 6} In his first assignment of error, appellant contends that the court abused its discretion by failing to establish a specific termination date for the spousal support award, citing the Supreme Court's decision in *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 554 N.E.2d 83, and our decision in *Cooper v. Cooper*, Cuyahoga App. No. 86718, 2006-Ohio-4270. In *Kunkle*, the Supreme Court held that "where a payee spouse has the resources, ability and potential to be self-supporting, an award of sustenance alimony should provide for the termination of the award, within a reasonable time and upon a date certain, in order to place a definitive limit upon the parties' rights and responsibilities," "except in cases involving a marriage of long duration, parties of advanced age or a homemaker-spouse with little opportunity to develop meaningful employment outside the home." *Kunkle*, 51 Ohio St.3d at 69, superceded by statute on other grounds; see *Cooper v. Cooper* (Aug. 24,

2001), Lucas App. No. L-01-1194, at 3. In *Cooper*, this court affirmed an award of support that terminated on the recipient's 62nd birthday or when the recipient began to receive Social Security.

{¶ 7} *Kunkle* and *Cooper* are distinguishable from this case on many levels. First, in both *Kunkle* and *Cooper*, the trial court exercised its discretion in setting the terms of the spousal support award. The court in this case did not. Rather, the parties here agreed upon the initial spousal support award. They did not include a definite termination date in their agreed judgment entry.¹ Appellant does not explain why the court should interpose a definite termination date now when the parties did not choose to include one.

{¶ 8} Second, appellant asks us to find that the trial court abused its discretion by *failing* to include a termination date. In *Cooper*, by contrast, we found the court *did not* abuse its discretion by *including* a termination date. The abuse of discretion standard does not allow us to substitute our judgment for the trial court's. We may reverse a judgment for abuse of discretion only if we find that the trial court's decision was unreasonable, arbitrary, or unconscionable. The fact that we found the court had the discretion to include a termination date in *Cooper* does not mean that the

¹The parties here did agree that support would terminate on the death of either party or on appellee's remarriage.

court did not have the discretion *not* to impose a termination date in this case.

{¶ 9} Finally, both *Cooper* and *Kunkle* were appeals from the initial support award; this case involves a requested modification. Different factors guide the court's decision regarding the terms of an initial award of support and its evaluation whether a support award should be modified. The primary factor guiding the decision whether to modify a support obligation is whether there has been a change in circumstances. See R.C. 3105.18(E) and (F). "There is no express requirement that the domestic relations court's order granting or denying a motion to modify spousal support reexamine in toto the factors listed in R.C. 3105.18(C)(1)." *Kucmanic v. Kucmanic* (1997), 119 Ohio App.3d 609, 613, 695 N.E.2d 1205.

{¶ 10} Appellant has not demonstrated that the court abused its discretion by failing to include a termination date for his spousal support obligations. Therefore, the first assignment of error is overruled.

{¶ 11} Second, appellant contends that the court abused its discretion by increasing his spousal support obligations. As noted above, in deciding whether to modify a party's support obligations, the guiding factor is whether there has been a change in circumstances. R.C. 3105.18(E). The court here found that appellant's circumstances had changed—his income had more than doubled while his expenses remained the same. Appellee's income had

not changed. Appellant asks us to consider other factors such as appellee's opportunities for education and training, her lack of documentation for claimed physical ailments, and her "substantial" assets as a result of the divorce. These other factors existed when the parties entered into their settlement agreement and do not represent a change that we should consider in deciding whether to modify a support order. Therefore, we overrule the second assignment of error and affirm the trial court's judgment.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
MARY J. BOYLE, J., CONCUR