[Cite as *Baronzzi v. Gamble*, 2024-Ohio-154.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

CELESTE M. BARONZZI,

Plaintiff-Appellant,

v.

JOHN E. GAMBLE,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 2022 CO 25

Appeal from the
Court of Common Pleas, Domestic Relations Division, of Columbiana County, Ohio
Case No. 2019 DR 00056

BEFORE:
Stephen W. Powell, Robert A. Hendrickson, Matthew R. Byrne, Judges of the Twelfth District Court of Appeals, Sitting by Assignment.

JUDGMENT:
Affirmed.

Atty. Michael A. Partlow, P.O. Box 1562, Stowe, Ohio 44224, for appellant.

Roth, Blair, Roberts, Strasfeld & Lodge, and *Atty. Christopher P. Lacich*, 100 E. Federal Street, Suite 600, Youngstown, Ohio 44503, for appellee

Dated: January 17, 2024

BYRNE, J.

{¶ 1} Celeste M. Baronzzi and John E. Gamble, who were previously married, obtained a final decree of divorce from the Columbiana County Court of Common Pleas, Domestic Relations Division.[1] Following the divorce, John moved to terminate or reduce his $3,300 per month spousal support payment to Celeste. Celeste moved the court to stay ruling on John's motion until this court decided an earlier appeal filed by the parties ("*Baronzzi I*")[2], which appeal concerned a different, and earlier, post-decree decision.

{¶ 2} The domestic relations court denied Celeste's motion to stay proceedings and instead held a hearing on John's motion to terminate or modify spousal support. Based on finding a change in circumstances, the court granted John's motion and reduced the spousal support award to $800 per month. Celeste appealed. For the reasons discussed below, we affirm the domestic relation court's decision.[3]

1. Factual and Procedural Background

A. The Divorce and the Divorce Decree

1. For clarity and to improve the readability of this opinion, we will refer to the parties by their first names. *See Nationwide Ins. Co. v. Alli*, 178 Ohio App.3d 17, 2008-Ohio-4318, ¶ 3 (7th Dist.).

2. *Baronzzi v. Gamble*, 7th Dist. Columbiana No. 2021 CO 32, 2023-Ohio-894.

3. The then-Chief Justice of the Ohio Supreme Court assigned this panel—three elected judges of the Twelfth District Court of Appeals—to preside in the Seventh District Court of Appeals for the purposes of hearing this appeal and concluding any proceedings. *See* Ohio Constitution, Article IV, Section 5(A)(3); Supreme Court of Ohio Guidelines for Assignment of Judges, Section 501(A)(1).

{¶ 3} Celeste and John married in 1993. Two children were born of the marriage, both of whom are now emancipated. Celeste filed for divorce in 2019.

{¶ 4} In August 2020, the domestic relations court issued a decree of divorce dividing the parties' marital property. Among other terms, the decree provided that John would pay Celeste $3,300 per month in spousal support. The court based the spousal support award on a disparity in income. Specifically, at the time, John earned $130,000 per year through his occupation as the chief assistant prosecutor for the Columbiana County Prosecutor's Office. Celeste, on the other hand, had never earned more than $12,000 per year during the marriage. Celeste also had limited income potential and medical issues.

B. John's Loss of Election, Post-Decree Motions, and First Appeal

{¶ 5} During the time the divorce was pending, John ran as a candidate for Columbiana County Prosecuting Attorney. The election, which was contested, occurred in November 2020, two months after the court issued the final divorce decree. John lost the election to another candidate. The incoming elected prosecutor informed John that his position would be eliminated. John then decided to retire, with a full pension.

{¶ 6} In December 2020, John moved to terminate or modify the spousal support award set forth in the divorce decree, based on an anticipated change in income. John noted his election loss and indicated that he intended to retire from his employment with the Columbiana County Prosecutor's Office.

{¶ 7} In August 2021, following a hearing that addressed John's motion regarding reducing spousal support and other matters in controversy which are not germane to this appeal, the court denied John's motion to reduce spousal support on the basis that it was

premature. In September 2021, Celeste appealed aspects of that decision to this court. John filed a cross-appeal.

C. Post-Decree Motions Filed while *Baronzzi I* was Pending

{¶ 8} In January 2022, while the *Baronzzi I* appeal was pending before this court, John filed a second motion to terminate or reduce spousal support. John argued that in the time since the domestic relations court's order denying his first motion to terminate or modify spousal support, the parties had begun to receive John's retirement benefits. John asserted that because the income of the parties was now the same or similar, the court should terminate spousal support or modify it to a "de minimis amount." Following John's filing, the court scheduled a hearing on the motion for March 2022.

{¶ 9} In March 2022, a little over one week before the hearing on John's motion, Celeste moved the domestic relations court to stay proceedings. Celeste argued that *Baronzzi I* remained pending before this court and noted that this court would be issuing rulings on two of John's assignments of error that related to spousal support and on the treatment of a lump sum John had received through employment following his retirement. Celeste argued that "[i]t does not make sense" for the domestic relations court to modify the spousal support award while the issue of spousal support was under appellate review, and while this court was considering "the potential division of an asset which would further materially impact the parties' respective financial positions." The domestic relations court denied Celeste's motion to stay.

{¶ 10} Celeste then moved for a continuance, which the court granted. The court continued the hearing until May 2022.

{¶ 11} In April 2022, approximately one month prior to the hearing, Celeste moved

the court to order John to submit to a vocational evaluation. As the basis for the request, Celeste stated that her case would "benefit" from John submitting to a vocational evaluation and that the evaluation would provide the court with "clarity" as to John's earning potential.

{¶ 12} John opposed the motion, arguing that there was no basis for him to be vocationally evaluated. John pointed out that he had retired with a full pension, of which Celeste was receiving half. Despite being retired, he was also working two jobs, a full-time job as an assistant law director, and a part-time job as a city solicitor. John argued that he would be justified not working at all but chose to work.

{¶ 13} The court denied Celeste's motion for a vocational evaluation without comment. In May 2022, the parties appeared before the domestic relations court for the hearing to resolve the pending post-decree issues.

D. The Hearing on John's Motion and the Decision

{¶ 14} Both John and Celeste testified at the hearing about their current income sources and introduced several supporting exhibits into evidence. Following the hearing, the domestic relations court issued its decision granting John's motion and reducing the spousal support award.

{¶ 15} In the decision, the domestic relations court noted that it had originally awarded Celeste spousal support in the amount of $3,300 per month, which, on an annual basis totaled $39,600.

{¶ 16} The court further noted that since leaving the prosecutor's office, John had obtained employment as an assistant law director for East Liverpool and as a solicitor for Wellsville. From these two employments, John earned approximately $50,000 in gross

income.

{¶ 17} The court further noted that John had retirement benefits from the Ohio Public Employees Retirement System ("OPERS"). As a result of John's OPERS benefit, John was receiving gross retirement income of approximately $42,000 per year. Also, as a result of John's OPERS benefits, Celeste was receiving gross income of approximately $37,000 per year.

{¶ 18} The court found that, in total, John's current gross income was approximately $92,000 per year. The court further found that, in total, Celeste's gross income was approximately $51,000 per year. This amount included the income from John's retirement benefits plus additional sources of income from social security disability, part-time employment, and certain oil and gas royalties.

{¶ 19} Based on the evidence presented, the court found that a modification to the spousal support order was proper. The court therefore reduced John's $3,300 per month spousal support award to $800 per month.

{¶ 20} While *Baronzzi I* remained pending in this court, Celeste noticed her appeal of the domestic relations court's decision granting John's motion to reduce the spousal support award.

E. First Appeal Decided

{¶ 21} In March 2023, this court issued its decision in *Baronzzi I*. Relevant to this appeal, we sustained one of John's cross-assignments of error that concerned the trial court's denial of his motion to terminate or modify spousal support. 2023-Ohio-894 at ¶ 50. We found that an employment-related lump sum payment that John received was improperly characterized by the domestic relations court as income, and that this finding

negated the court's related determination that John's 2021 income exceeded his income as set forth in the divorce decree. *Id*. at ¶ 49. We remanded with instructions for the court to assess John's request for a modification of spousal support for the appropriate time period. *Id*. at ¶ 50.

II. Law and Analysis

{¶ 22} Celeste appealed the decision granting John's motion to modify spousal support and presents four assignments of error for our review.

A. Authority to Modify Spousal Support Pending Appeal

{¶ 23} Celeste's first assignment of error states:

{¶ 24} THE TRIAL COURT ERRED, AS A MATTER OF LAW, BY GRANTING APPELLEE'S MOTION TO MODIFY SPOUSAL SUPPORT AT A TIME WHEN IT DID NOT HAVE JURISDICTION TO DO SO.

{¶ 25} Celeste contends that the domestic relations court erred by denying her motion to stay proceedings until this court decided *Baronzzi I*. Celeste argues that because *Baronzzi I* involved issues related to spousal support, the domestic relations court lacked jurisdiction to grant John's request to modify spousal support. Questions relating to the subject-matter jurisdiction of any court are pure matters of law, which we review de novo. *See In re Roudebush Trust*, 7th Dist. Carroll No. 21 CA 0949, 2021-Ohio-4557, ¶ 19.

{¶ 26} In response to Celeste's argument here, John contends that Civ.R. 75(H) expressly provided the domestic relations court with authority to modify the spousal support order while *Baronzzi I* remained pending. That rule provides,

> **Relief Pending Appeal.** A motion to modify, pending appeal, either a decree allocating parental rights and responsibilities

> for the care of children, a spousal or other support order, shall be made to the trial court in the first instance, whether made before or after a notice of appeal is filed. The trial court may grant relief upon terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party and in the best interests of the children involved. Civ. R. 62(B) does not apply to orders allocating parental rights and responsibilities for the care of children or a spousal or other support order. An order entered upon motion under this rule may be vacated or modified by the appellate court. The appellate court has authority to enter like orders pending appeal, but an application to the appellate court for relief shall disclose what has occurred in the trial court regarding the relief.

{¶ 27} Pursuant to the plain language of Civ.R. 75(H), a party may file a motion to modify a spousal support order after a notice of appeal is filed. The rule further provides that any such motion should be filed with the trial court first, which is precisely what occurred here.

{¶ 28} We note that Civ.R. 75(H) is a procedural mechanism tailored to the unique nature of issues relating to spousal support awards, which are potentially subject to constantly changing circumstances due to, for instance, a change in financial circumstances. The rule provides for a straightforward process for protecting these interests during the appellate process. *See Denier v. Carnes-Denier*, 12th Dist. Warren Nos. CA2016-02-012 and CA2016-04-022, 2017-Ohio-334, ¶ 31.

{¶ 29} However, we also note that the Civil Rules do not determine the jurisdiction of any court. The jurisdiction of the courts of this state are governed by the Ohio Constitution and statute. *See State ex rel. Gray v. Kimbler*, 169 Ohio St.3d 424, 2022-Ohio-3937, ¶ 13. Moreover, Civ.R. 82 specifically provides that the Civil Rules "shall not be construed to extend or limit the jurisdiction of the courts of this state." Therefore,

notwithstanding Civ.R. 75(H), we must still determine whether the domestic relations court maintained jurisdiction to hear John's motion to modify spousal support while *Baronzzi I* was pending.

{¶ 30} There is no question in this case that the domestic relations court had jurisdiction over the post-decree issues raised in these proceedings. The legislature has expressly provided that "[t]he court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters." R.C. 3105.011(A).

{¶ 31} But a trial court generally loses jurisdiction after an appeal, "except to take action in aid of the appeal, or when a remand is ordered for a ruling on a pending motion." *Dowdle v. Dowdle*, 7th Dist. Harrison No. 482, 1997 WL 467574, *3 (Aug. 7, 1997). A trial court retains only that jurisdiction that is not inconsistent with that of the court of appeals' jurisdiction to reverse, modify, or affirm the judgment. *Id*.

{¶ 32} In *Baronzzi I*, John assigned three errors that related to the domestic relation court's decision to *deny* his earlier motion to terminate or modify spousal support. 2023-Ohio-894 at ¶ 49. The domestic relations court's decision was premised on its conclusion that John's motion was premature. *Id*. at ¶ 18. As stated above, we sustained one of John's assignments of error on the basis that the court improperly considered John's receipt of a sum of money as income to him. We reversed with instructions that the court should consider John's motion for the "appropriate time period." *Id*. at ¶ 50.

{¶ 33} Upon consideration, we do not find that the domestic relations court lacked jurisdiction to consider John's second-filed motion to modify spousal support. The motion to modify or terminate spousal support at issue in this appeal is not the same motion to

terminate or modify spousal support that was denied by the domestic relations court in *Baronzzi I*. And the first motion to terminate or modify spousal support concerned a different time period than was at issue in the second motion. Therefore, this court's determination, in *Baronzzi I*, of whether the domestic relations court erred in denying that earlier motion would have no practical effect on the domestic relation court's later decision to hear and grant relief on the second motion.

{¶ 34} Accordingly, we find that the domestic relations court retained jurisdiction to hear and grant relief on John's motion to terminate or modify spousal support because that jurisdiction was not inconsistent with the jurisdiction of this court to reverse, modify, or affirm the judgment on appeal. Furthermore, the procedures set forth in Civ.R. 75(H) provided an additional, non-jurisdictional basis for the domestic relations court to consider John's motion. Based on the foregoing analysis, we overrule Celeste's first assignment of error.

B. Denial of Request for Vocational Evaluation

{¶ 35} We address Celeste's second and fourth assignments of error collectively.

{¶ 36} Celeste's second assignment of error states:

{¶ 37} THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY DENYING APPELLANT'S MOTION FOR A VOCATIONAL EVALUATION OF APPELLEE.

{¶ 38} Celeste's fourth assignment of error states:

{¶ 39} THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY CUTTING APPELLANT'S SPOUSAL SUPPORT BY OVER 75%.

{¶ 40} Celeste argues that the domestic relations court abused its discretion by not

granting her motion to order John to submit to a vocational evaluation. Celeste argues that John's hourly wages were "well out of line" with that earned by his peers and therefore, the domestic relations court should have ordered the vocational evaluation so that she could support the argument that John was voluntarily underemployed.

{¶ 41} In general, we review a domestic relation court's ruling on discovery matters under the abuse of discretion standard. *Keeley v. Croft*, 7th Dist. Belmont No. 17 BE 0016, 2017-Ohio-9386, ¶ 42. An abuse of discretion implies that the domestic relation court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 42} Celeste cites Civ.R. 35 as the basis for her request for a vocational evaluation. Civ.R. 35(A) provides,

> **Order for Examination.** When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit himself to a physical or mental examination or to produce for such examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

{¶ 43} Civ.R. 35(A) refers to physical and mental examinations and does not refer to vocational evaluations. The issues raised in a vocational evaluation could relate to a party's physical and mental capabilities. However, there is no claim presented here that John was underemployed due to an alleged mental or physical condition that Celeste disputes. Instead, Celeste is arguing that John is capable of earning more money based on his background and experience as an attorney.

{¶ 44} By its language, Civ.R. 35 applies only if "the mental or physical condition (including the blood group) of a party * * * is in controversy." Therefore, we do not find that Civ.R. 35 authorizes a vocational evaluation in a domestic relations case where a person's physical or mental condition is not at issue. *See Albrecht v. Albrecht*, 11th Dist. Trumbull Nos. 2015-T-0092 and 2015-T-0098, 2017-Ohio-336 (reviewing the denial of request for a vocation evaluation under Civ.R. 35 where the party's disability determination was in controversy).

{¶ 45} As such, we will not review this issue under Civ.R. 35, but instead under the general discovery standard, i.e., for an abuse of discretion. *Keeley*, 2017-Ohio-9386 at ¶ 42. Upon review, we do not find that the trial court abused its discretion in denying Celeste's motion for a vocational examination.

{¶ 46} As previously stated, the domestic relations court denied Celeste's motion for a vocational evaluation without comment. Initially, we note that the domestic relations court may have exercised its discretion in declining to order the vocational evaluation because Celeste requested the evaluation approximately one month before the hearing on John's motion. The court had already continued the hearing once, at Celeste's request. It seems apparent that arrangements for obtaining the vocational evaluation and any subsequent written report could well have required yet another continuance of the hearing date.

{¶ 47} Celeste also had known for more than a year that John was requesting a modification to spousal support based upon a financial change in circumstances. If John's vocational status was so crucial to Celeste's case, there is no reason that she would have needed to wait until one month before the hearing to request the evaluation.

{¶ 48} Regardless of whether there was a valid reason for the delay in requesting the vocational evaluation, we perceive no abuse of discretion in the court's decision. The only basis Celeste provided for her need for a vocational hearing was the conclusory statement that John "is voluntarily underemployed," that her case would "benefit" from John submitting to an evaluation, and that such evaluation would provide "clarity" to the court. The court would have been justified in exercising its discretion and denying the motion based on this lack of specificity.

{¶ 49} Finally, the undisputed facts are that following the divorce, John, after an over 30-year public service career, was informed that his position had been eliminated. He decided to retire from employment, with a full pension benefit. Despite retiring, John continued working two jobs, earning an additional $50,000 per year. With his OPERS defined benefit and income from these jobs, his income was approximately $92,000. And since the divorce decree, Celeste has been receiving her share of John's OPERS defined pension, which had resulted in an increase in her annual income. Under these circumstances, the domestic relations court could readily conclude that Celeste lacked a need for a vocational examination. Specifically, the court could conclude that no meaningful discovery would result from a vocational examination and would only result in delaying the proceedings.

{¶ 50} In her fourth assignment of error, Celeste repeats arguments made in support of her second assignment of error. However, she frames those arguments as addressing the domestic relations court’s putative error in reducing her spousal support award by over 75 percent, arguing that the reduction was error because John is "almost certainly voluntarily underemployed." However, for the reasons stated previously, the

court did not abuse its discretion by denying Celeste's request for a vocational evaluation. We overrule Celeste's second and fourth assignments of error.

C. The Decision to Modify Spousal Support

{¶ 51} Celeste's third assignment of error states:

{¶ 52} THE TRIAL COURT COMMITTED ERROR, AS A MATTER OF LAW, BY GRANTING A MODIFICATION OF SPOUSAL SUPPORT BASED UPON FACTORS WHICH WERE CLEARLY CONTEMPLATED AT THE TIME THAT SPOUSAL SUPPORT WAS INITIALLY ORDERED.

{¶ 53} Celeste argues that the domestic relations court erred by granting John's motion to reduce the spousal support award. Celeste contends that John's potential loss of income was contemplated at the time of the divorce decree and therefore the trial court lacked jurisdiction to modify spousal support award.

{¶ 54} We review a domestic relation court's decision on a motion to modify or terminate spousal support for an abuse of discretion. *See Rawlings v. Doran*, 7th Dist. Mahoning No. 22 MA 0001, 2022-Ohio-4758, ¶ 14. As stated above, an abuse of discretion implies that the decision was unreasonable, arbitrary, or unconscionable. *Blakemore*, 5 Ohio St.3d at 219.

{¶ 55} R.C. 3105.18(E) governs the modification of a spousal support award. Pursuant to that statute, for a court to modify an award of spousal support set forth in a divorce decree, it must first have reserved jurisdiction to do so. *Rawlings* at ¶ 15. The domestic relations court in this case reserved jurisdiction over the issue of spousal support in the divorce decree.

{¶ 56} Next, a court must find that a change in circumstances for either party has

occurred. R.C. 3105.18(E); *Rawlings* at ¶ 16. R.C. 3105.18(F)(1) provides that a change in circumstances includes, but is not limited to,

> any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses, or other changed circumstances so long as both of the following apply:
>
> (a) The change in circumstances is substantial and makes the existing award no longer reasonable and appropriate.
>
> (b) The change in circumstances was not taken into account by the parties or the court as a basis for the existing award when it was established or last modified, whether or not the change in circumstances was [foreseeable].

The burden is on the movant to establish that a substantial change in circumstances has occurred since the time of the domestic relations court's original decision. *Rawlings* at ¶ 16.

{¶ 57} Celeste does not argue that John failed to meet his burden of demonstrating that there was a substantial change in circumstances. Instead, Celeste argues, that "the significant changes that have occurred with regard to the relative income of the parties [was] contemplated at the time of trial. [John] readily admitted that it was foreseeable at the time of trial that he would lose the election." Celeste also argues that it was "absolutely foreseeable that when [she] started receiving the OPERS funds she was awarded as part of the property division that her annual income would significantly rise."

{¶ 58} In essence, Celeste is arguing that a modification of spousal support was not in order because it was foreseeable that (1) John would lose the election, his job, and retire, and (2) that because of John's retirement, her income, through John's defined benefit through OPERS, would significantly increase.

{¶ 59} However, R.C. 3105.18(F)(1)(b) expressly provides that the foreseeability of a change in circumstances is not a factor in determining whether a change in circumstances merits a modification to a spousal support award. Instead, the issue is whether the change of circumstances was "not taken into account by the parties or the court as a basis for the existing award when it was established * * *."

{¶ 60} Celeste points to nothing in the record that would suggest that the parties accounted for John losing the election, losing his employment, retiring with a pension, and then voluntarily obtaining new employment at the time the court determined the original spousal support award and factored that possibility into the spousal support award. Instead, the original spousal support award of $3,300 per month was entirely based upon John's then $130,000 annual salary and Celeste's modest income at the time.

{¶ 61} Accordingly, we do not find any error, much less anything rising to the level of an abuse of discretion, in the domestic relation's court's determination that John met his burden of proving a change of circumstances for purposes of a modification of a spousal support award under R.C. 3105.18(E).

{¶ 62} Additionally, we note that despite Celeste's income substantially increasing because of her receipt of John's OPERS defined benefit, she appears to suggest that she should continue receiving $3,300 per month in support, notwithstanding everything that has occurred since John lost the election and retired. Celeste does not articulate why she believes this inequitable result could be legally substantiated. For these reasons, we overrule Celeste's fourth assignment of error.

III. Conclusion

{¶ 63} The domestic relations court had jurisdiction to consider and determine

John's motion for a modification of spousal support. Celeste has failed to establish any abuse of discretion in the court's decision to deny her request for a vocational evaluation and in the court's decision to modify the spousal support award.

{¶ 64} Judgment affirmed.

S. Powell, P.J., concurs.

Hendrickson, J., concurs.

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Columbiana County Court of Common Pleas, Domestic Relations Division, for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.