

STATE OF MICHIGAN  
COURT OF APPEALS

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ROSEANNE VENTIMIGLIA,

Plaintiff-Appellant,

v

ANDREW J. VENTIMIGLIA,

Defendant-Appellee.

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UNPUBLISHED

August 6, 2002

No. 231332

Macomb Circuit Court

LC No. 95-000396-DM

Before: Fitzgerald, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the order denying her post-judgment motion for an increase in child support and for attorney fees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Modification of a child support order is a matter within the trial court's discretion, although the trial court must abide by the statutory framework of MCL 552.17. Pursuant to this provision, the trial court has the power to modify a support order upon a showing by the petitioning party of a change in circumstances that justifies modification. *Crego v Coleman*, 463 Mich 248, 256; 615 NW2d 218 (2000). With regard to the motion for modification that is the subject of this appeal, the sole "change in circumstance" alleged by plaintiff was defendant's attempt to establish a small taxicab company. The evidence presented at the evidentiary hearing revealed that defendant failed in this venture. There was no other evidence that defendant was failing to reveal income or had unexercised earning potential. Indeed, the evidence revealed that defendant's employment and financial circumstances were consistent with those at the time the trial court entered the existing child support order on May 27, 1999, following extensive evidentiary hearings. We find no evidence supporting plaintiff's claim of changed circumstances and conclude that the trial court did not abuse its discretion by denying plaintiff's motion to increase defendant's child support obligation.<sup>1</sup> *Good v Armstrong*, 218 Mich App 1, 4-5; 554 NW2d 14 (1996).

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<sup>1</sup> Plaintiff is not precluded from filing a motion to increase child support should a material change of circumstances occur in the future.

Plaintiff also contends that the trial court erred by denying her request for attorney fees incurred in bringing the motion to increase child support. The award of attorney fees in a divorce action is within the trial court's discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999). Fees are awarded only when it is necessary to enable the party to carry on or defend the suit. MCR 3.206(C)(2); *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). This Court will not reverse the grant or denial of attorney fees absent a manifest abuse of discretion.

Here, plaintiff did not prevail in her motion, and plaintiff has not demonstrated that defendant somehow forced her to move for an increase in child support. Testimony indicated that, at the time of the hearing in this matter, plaintiff's income was greater than defendant's. Under these circumstances, the circuit court did not abuse its discretion by denying plaintiff's request for fees. *Maake, supra* at 189.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Richard Allen Griffin