STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINE BEAUCHAMP,

Plaintiff-Appellee,

v

WILLIAM BEAUCHAMP,

Defendant-Appellant.

UNPUBLISHED
August 6, 2002

No. 231585
Clinton Circuit Court
LC No. 90-009573-DM

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

PER CURIAM.

Defendant, William Beauchamp, appeals by leave granted the December 4, 2000, order modifying the parties' judgment of divorce to increase defendant's child support obligation effective January 7, 2000. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced on August 5, 1991. Plaintiff received primary physical custody of the parties' three children and defendant was required to pay child support. Over the years the parties had disputes regarding child support. In April 1998 the Friend of the Court recommended that defendant pay support of $153 per week. Plaintiff objected to the recommendation, and a hearing was held in June 1998. At that hearing the parties indicated that they had reached an agreement. Pursuant to that agreement, the trial court entered a written order requiring defendant to pay support for three children at the rate of $225 per week through December 1998. The order further directed that the matter would be referred to the Friend of the Court for a redetermination in January 1999. In addition, the order directed that defendant's support would be reconsidered every January thereafter by the Friend of the Court:

> IT IS HEREBY ORDERED AND ADJUDGED that Defendant's child support obligation to Plaintiff, for the parties' three minor children, shall be $225 per week, commencing Friday, June 5, 1998, and shall remain set at that amount through December, 1998.
>
> IT IS FURTHER ORDERED AND ADJUDGED that the issue of child support shall be referred to the Clinton County Friend of the Court in January, 1999, for child support determination purposes.

> IT IS FURTHER ORDERED AND ADJUDGED that the issue of child support shall be re-referred to the Clinton County Friend of the Court annually, in January of each year, for child support determination purposes and support shall be set based on the past years income.
>
> IT IS FURTHER ORDERED AND ADJUDGED that the remaining provisions of the Friend of the Court support recommendation, issued January 16, 1998, shall be adopted, with the exception of the amount of child support, as specifically outlined herein.

Pursuant to the August 3, 1998, order, the trial court ordered the Friend of the Court to commence a support redetermination in January 1999. The parties, however, reached a stipulated agreement providing that defendant would pay support of $232 per week for three children, $155 per week for two children, and $77 per week for one child. The last two paragraphs of the stipulated order provided:

> IT IS FURTHER STIPULATED AND AGREED that either party may motion for a modification of the Child Support upon a substantial change in circumstances.
>
> IT IS FURTHER STIPULATED AND AGREED that all other terms and conditions of the parties' Judgment of Divorce and subsequent Orders shall stay in effect except for the changes stated herewith.

On January 6, 2000 the trial court again ordered the Friend of the Court to commence a support redetermination. The Friend of the Court arrived at a recommended order, and a proposed order of the court incorporating the Friend of the Court recommendation was mailed to the parties on June 13, 2000. The proposed order indicated that the new amount would take effect on February 18, 2000, unless an objection was received within fourteen days.

Defendant objected, and a hearing was held on September 18, 2000. The trial court agreed that the Friend of the Court had erroneously calculated defendant's income and directed the Friend of the Court to recalculate defendant's support obligation. The trial court also ruled that the new support obligation would be effective January 7, 2000, pursuant to the directive in the August 3, 1998, order that defendant's support be redetermined every January.

Defendant moved for reconsideration, arguing that the provision in the May 6, 1999, order allowing the parties to motion for a modification of support upon a showing of a substantial change in circumstances modified the provision in the August 3, 1998, order for an annual review. Thus, defendant argued that there was no petition for modification and, therefore, no authority for retroactive modification of support. Defendant noted in his motion for reconsideration, however, that

> If, in fact, there was a current order in place requiring an annual review of child support, it might be appropriate to make the change each year retroactive to the beginning of the year.

In an order denying the motion, the trial court explained that the May 6, 1999, order did:

> not set aside the annual review provision contained in the August 3, 1998 order. That provision was entered, partly at the direction of the Court, due to the history of child support disputes in this case. . . . The May 6, 1999 order does not specifically eliminate the court's annual review provision and the Court will not read termination of that provision into the May 6, 1999 order.

The Friend of the Court again reviewed defendant's support obligation. In an order dated December 4, 2000, the trial court adopted the Friend of the Court's recommendation that defendant pay support of $293 per week for two children and $190 per week for one child, effective January 7, 2000.

Defendant argues that the provision of the December 4, 2000, order making the new support amount effective January 7, 2000, constitutes a retroactive modification that is prohibited by MCL 552.603(2). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Ypsilanti Housing Comm v O'Day*, 240 Mich App 621, 624; 618 NW2d 18 (2000).

Generally speaking, MCL 552.603(2) prohibits retroactive modification of support payments. *Waple v Waple*, 179 Mich App 673, 676; 446 NW2d 536 (1989). That statute provides that every support order constitutes a judgment on and after the date each support payment is due

> and is not, on and after the date it is due, subject to retroactive modification. Retroactive modification of a support payment due under a support order is permissible with respect to any period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.

Under the plain language of the statute, a retroactive increase in support is prohibited except for the period of time when a pending motion to modify support is under consideration. Here, the parties stipulated to an annual review of the issue of support based on the parties prior year's income and to setting support based on the past year's income.[1] Thus, the August 3, 1998, stipulated order essentially served as a petition and placed defendant on notice of a possible modification in support. Indeed, defendant indicated below that if the provisions of the August 3, 1998, remained in effect after entry of the May 3, 1999, stipulated order then the trial court could retroactively modify support pursuant to the annual review process.

Because the Friend of the Court proceeded based upon the annual review provision in the August 3, 1998, stipulated order and the "orders of referral" issued by the trial court in January of 1999 and 2000, the pivotal question under the circumstances of this case is whether the provision in the August 3, 1998, order for an annual review was modified by the May 6, 1999, order.

The May 6, 1999, order provided in pertinent part that:

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[1] A change in the recommendation of the Friend of the Court can constitute a change in circumstances that would justify modifying support. *Calley v Calley*, 197 Mich App 380, 383; 496 NW2d 305 (1992).

> IT IS FURTHER STIPULATED AND AGREED that either party may motion for a modification of the Child Support upon a substantial change of circumstances.
>
> IT IS FURTHER STIPULATED AND AGREED that all other terms and conditions of the parties' Judgment of Divorce and subsequent Orders shall stay in effect except for the changes herewith.

Beside the paragraph regarding modification upon a substantial change in circumstances are the handwritten words: "Precatory, not mandatory."

The May 6, 1999, order added the provision that either party could motion for a modification of support upon a substantial change of circumstances but that such a motion was not mandatory. The context of this provision indicates that the provision was inserted to permit a party to move for a modification of support between annual reviews if a substantial change of circumstances occurred. The insertion of this provision does not indicate that the directive in the August 3, 1998, order for annual review of the child support order (which was negotiated because of defendant's fluctuating income) was changed.[2] The August 3, 1998, order remained in effect except for the specific changes made in the May 6, 1999, order and, therefore, the trial court did not abuse its discretion by ordering modification of child support retroactive to January 7, 2000.[3]

Affirmed.

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

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[2] A change in the recommendation of the Friend of the Court can constitute a change in circumstances that would justify modifying support. *Calley v Calley*, 197 Mich App 380, 383; 496 NW2d 305 (1992). The provision in the stipulated order for annual review, which was inserted specifically because of defendant's fluctuating income, anticipated a material change of circumstances.

[3] Although not pertinent to this appeal, this writer notes that an annual review was ordered in January 2001 and in April 2001 the trial court entered an order for support that provided that the "attached recommendation for a change in child support shall become an order of the Court, unless either party submits a written objection." The Friend of the Court recommended that defendant's child support obligation remain the same. Defendant objected on the ground that the Friend of the Court miscalculated his income. In an order dated July 26, 2001, the trial court found that defendant's income was involuntarily reduced to $64,537.80 and ordered the Friend of the Court to issue a recommended child support order using that income figure. The court also ordered that "The annual review process as provided in the August 3, 1998, order is hereby discontinued."