STATE OF MICHIGAN

COURT OF APPEALS

WARREN MELVIN HOWE,

Plaintiff-Appellee,

V

FRANCES ANN HOWE,

Defendant-Appellant.

UNPUBLISHED
August 27, 2002

No. 228336
Oakland Circuit Court
Family Division
LC No. 84-270764-DM

Before: Whitbeck, C.J., Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals by leave granted from the June 15, 2000, trial court order granting plaintiff's motion for reconsideration and retroactively reducing plaintiff's spousal support obligation, as well as denying defendant's motion to reduce the support arrearage to a judgment. We affirm in part, reverse in part, and remand for further proceedings.

I. Facts and Proceedings

In April 1998, following motions by both parties to adjust the amount of spousal support, the trial court adopted the friend of the court referee's recommendation increasing plaintiff's spousal support obligation to $452.62 per week. In September 1999, plaintiff filed a motion to reduce this amount, claiming that the $452.62 figure was based on an erroneous calculation of his income. The trial court again referred the matter to the friend of the court. The referee agreed with plaintiff and reduced his obligation to $236 per week, effective the date plaintiff filed his motion. Despite plaintiff's request, the referee refused to make this adjustment retroactive to April 1998 because of language in MCL 552.603(2) that prohibits retroactive modification of support orders.

Plaintiff filed objections to the referee's recommendation and requested a de novo hearing, but the trial court dismissed the objections because plaintiff failed to timely notice the objections for hearing. Plaintiff filed a motion for reconsideration, which the court granted. It also granted plaintiff's request to retroactively modify the change in spousal support to April 1998 and denied defendant's motion to reduce the arrearage to a judgment. This Court granted defendant's application for leave to appeal the trial court's order.

On appeal, defendant raises four claims of error: (1) that the trial court erred by retroactively modifying plaintiff's support obligation; (2) that the court erred in granting

plaintiff's motion for reconsideration; (3) that the court erred in considering plaintiff's motion for reduction of spousal support without requiring plaintiff to demonstrate a change in circumstances; and (4) that the court erred in denying her motion to reduce the support arrearage to a judgment.

II. Standard of Review

A. Retroactive Modification of Spousal Support

The interpretation of court rules and statutes is a question of law that we review de novo. *Staff v Johnson*, 242 Mich App 521, 527; 619 NW2d 57 (2000).

B. Plaintiff's Motion for Reconsideration

We review motions for reconsideration for abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

C. Failure to Require Change of Circumstances

The statutory "change of circumstances" requirement is an issue of law. However, because defendant agreed with the referee's legal conclusions on this issue, defendant cannot now assert that this was error, and our review is not warranted. *Hilgendorf v St John Hospital*, 245 Mich App 670, 683; 630 NW2d 356 (2001).

D. Motion to Reduce Arrearage to Judgment

The application and interpretation of MCL 552.603(2) is a question of law that we review de novo. *Staff, supra* at 527.

III. Analysis

A. Retroactive Modification of Spousal Support

Defendant argues that the trial court erred by modifying plaintiff's spousal support obligations retroactive to April 15, 1998, contrary to MCL 552.603(2). We agree. Retroactive modification of support to a period before defendant had notice of a pending petition for modification is prohibited by the plain language of MCL 552.603(2). *Harvey v Harvey*, 237 Mich App 432, 438; 603 NW2d 302 (1999); *Waple v Waple*, 179 Mich App 673, 676; 446 NW2d 536 (1989).[1] Therefore, the court erred in modifying support retroactive to April 15, 1998. Pursuant to the statute, the modification could be made retroactive only to the date defendant is deemed to have had notice of the petition for modification—September 22, 1999.

Plaintiff argues that the trial court's decision to modify support retroactive to April 15, 1998, was authorized by MCR 2.612(C)(1)(e) and (f) because the earlier support order was based

[1] Plaintiff asserts that the statute prohibits retroactive modification of child support orders, not spousal support orders. However, the statute does not make this distinction.

on an erroneous calculation of plaintiff's income. Initially, we note that the trial court did not refer to this court rule as a basis for its decision to modify support retroactive to April 15, 1998. Plaintiff cited this rule as support for his motion for relief from judgment filed in December 1999,[2] but the record does not reflect that he addressed MCR 2.612 in his objections to the recommendation or at the hearing on his motion for reconsideration.

Nevertheless, we agree with the referee that relief under this court rule is inappropriate. Plaintiff based his motion on the "mistake" in calculating his income, but did not cite the portion of the court rule concerning mistakes, presumably because his motion was filed more than one year after entry of the order, contrary to the rule. Instead, plaintiff relied on MCR 2.612(C)(1)(e) and (f),[3] grounds that must be raised "within a reasonable time." MCR 2.612(C)(2). Generally, relief may be granted under MCR 2.612(C)(1)(f) only if the reason for setting aside the judgment does not fall under subsections (a) through (e), and the judgment was obtained by improper conduct of the party in whose favor the judgment was rendered. *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999). Nonetheless, a court may grant relief from judgment under MCR 2.612(C)(1)(f) when one or more of the grounds in subsections (a) through (e) exist if "additional factors exist that persuade the court that injustice will result if the judgment is allowed to stand." *Huegel*, *supra* at 481. Here, however, plaintiff has not demonstrated that additional factors exist beyond the mistake itself. Moreover, the error was not caused by improper conduct by defendant. Therefore, we reject plaintiff's argument that the trial court's decision to modify support retroactive to April 15, 1998, contrary to MCL 552.603(2), was permissible under MCR 2.612(C)(1)(f). The referee's recommendation did not address the applicability of subsection (e) and plaintiff has not briefed its applicability on appeal. Therefore, we consider this argument abandoned. *People v Knapp*, 244 Mich App 361, 374-375 n 4; 624 NW2d 227 (2001).

B. Plaintiff's Motion for Reconsideration

Defendant also argues that the trial court abused its discretion by granting plaintiff's motion for reconsideration. We disagree. The court recognized that plaintiff's attorney failed to file a notice of hearing as required under MCR 3.215(E)(3)(b), but had filed timely objections to the referee's recommendation. When the court granted the motion for reconsideration, it decided to consider those timely objections. Contrary to defendant's assertions, the trial court was not prohibited from considering the motion because it raised the same arguments plaintiff raised in his motion for de novo hearing. The applicable rule, MCR 2.119(F)(3), states "[g]enerally, and without restricting the discretion of the court," the court will not grant a motion for reconsideration that raises the same issue previously ruled on by the court. Here, the court exercised its discretion to hear plaintiff's motion, but did not abuse it. *Churchman*, *supra* at 233.

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[2] The record does not contain an order granting or denying that motion, but does reflect that the court referred this matter to the friend of the court on the date scheduled for hearing the motion.

[3] The relevant portion of subsection (e) provides grounds for relief when "it is no longer equitable that the judgment should have prospective application." Subsection (f) provides relief based on "[a]ny other reason justifying relief from the operation of the judgment." MCR 2.612(C)(1)(e) and (f).

C. Failure to Require Change of Circumstances

Defendant also contends that the trial court erred in considering "plaintiff's April 15, 1998, motion" for reduction of spousal support because there was no change in circumstances. Initially, we note that plaintiff's motion for reduction of spousal support was filed not on April 15, 1998, but instead on September 22, 1999. In any case, we conclude that appellate relief is not warranted. The referee's recommendation concluded that evaluating for a change of circumstances was not necessary because of the error concerning plaintiff's income level that had been made in the previous recommendation. Defendant did not object to this conclusion and affirmatively expressed that the referee's recommendation "conform[ed] to the law." She cannot now claim that this was error. *Hilgendorf*, *supra* at 683.

D. Motion to Reduce Arrearage to Judgment

Defendant also argues, based on MCL 552.603(2), that the trial court erred in denying her motion to reduce the support arrearages to a judgment. MCL 552.603(2) provides that "a support order that is part of a judgment or is an order in a domestic relations matter . . . is a judgment on and after the date each support payment is due . . . ." *Id.* Defendant claims that she is, therefore, entitled to entry of a judgment for the amount due. However, defendant fails to recognize the import of the remaining language in that subsection. The judgment that exists on and after the due date of each support payment has "the full force, effect, and attributes of a judgment of this state . . . ." *Id.* Therefore, the order for spousal support is *itself* a judgment for the unpaid amount as of each due date. Accordingly, defendant may employ the same means of collection that would apply to a formally labeled judgment.

Defendant asserts that she needed a judgment to pursue collection in Florida, but does not provide any support for her claim. The support order itself should be readily identifiable as a judgment because it is required to contain language describing it as such. MCL 552.603(6)(a). Therefore, although the court erred in retroactively modifying the amount due, it did not err by refusing to reduce the amount owed to a "judgment" because it was unnecessary to do so.

IV. Conclusion

In sum, we affirm the trial court's order insofar as it granted plaintiff's motion for reconsideration and denied plaintiff's motion to reduce the arrearage to a judgment. We reverse the order to the extent it modified support retroactive to April 15, 1998.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded, neither party having prevailed in full.

/s/ William C.Whitbeck
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra