

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Cheryl A. Schroeder

Court of Appeals No. F-08-010

Appellee

Trial Court No. 05DV000139

v.

Michael C. Schroeder

DECISION AND JUDGMENT

Appellant

Decided: September 4, 2009

* * * * *

Jim Miller, for appellee.

Dennis P. Strong, for appellant.

* * * * *

HANDWORK, J.,

{¶ 1} This case is before the court on appeal from a judgment of the Fulton County Court of Common Pleas, Domestic Relations Division. The following facts are relevant to our disposition of this cause.

{¶ 2} Appellee, Cheryl A. Schroeder, and appellant, Michael C. Schroeder, were divorced on December 19, 2006. Appellant was ordered to pay appellee spousal support in the amount of \$850 per month for seven years subject to appellee's remarriage, the death of one of the parties, or a substantial change in circumstances.

{¶ 3} On February 14, 2008, and in an amended motion filed on April 7, 2008, appellant requested, inter alia, the modification of the spousal support award. He claimed that the circumstances of the parties had changed since the entry of the final divorce decree because he was earning less money, and appellee was earning more money. After a hearing on his motion, appellant filed a memorandum in support of his motion for modification of spousal support in which he also claimed that a substantial change of circumstances occurred because appellee was "cohabitating" with a nonrelative male.

{¶ 4} On July 30, 2008, the trial court denied appellant's motion. The court found that a change in circumstances occurred because appellee had reduced her debt by selling her house, had reduced her expenses, and had entered into a living arrangement with an adult male. The judge decided, however, that this did not constitute a substantial change in circumstances as required under the relevant law. In addition, the lower court specifically determined that appellee was not engaging in cohabitation within the meaning of *Moell v. Moell* (1994), 98 Ohio App.3d 748 and *Dickerson v. Dickerson* (1993), 87 Ohio App.3d 848.

{¶ 5} Appellant appeals the trial court's judgment and sets forth the following assignment of error:

{¶ 6} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING DEFENDANT'S MOTION TO MODIFY SPOUSAL SUPPORT."

{¶ 7} Appellant alleges that three changes in the circumstances of the parties have taken place since the entry of the original spousal support award. First, he asserts that appellee reduced her living expenses by selling the marital home awarded to her as a division of marital property. Second, appellant alleges that his income is less than at the time of the divorce. Third, he argues that appellee is cohabitating with an unrelated male.

{¶ 8} The change of circumstances required for a modification of spousal support must be substantial and must not have been contemplated at the time of the original decree. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, at ¶ 31. The trial court's decision on a motion to modify spousal support is reviewed for an abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218. We cannot substitute our judgment for that of the trial court. *Id.* at 219. If, however, the trial court's attitude in reaching its decision is unreasonable, arbitrary or unconscionable, it must be reversed as an abuse of discretion. *Id.*

{¶ 9} At the hearing on this matter, appellee testified that she had to sell the marital residence because she could not afford to pay the monthly expenses. She netted \$45,000 from that sale. As of a month before the hearing, approximately, half of these

funds were invested in a certificate of deposit and the other half was in a savings account. A portion of the money was used to pay off credit card debt and part of the attorney's fees appellee owed as a result of the divorce proceedings. Appellee's income for the year 2007 was approximately \$20,000, including spousal support. This income was \$6,500 less than what she earned at the time of the divorce. As of February 2008, she began receiving, pursuant to a QDRO, \$1,056 per month from appellant's pension.

{¶ 10} Appellee and her two daughters moved into her boyfriend's residence at the end of March 2008. She was not paying her boyfriend any rent, but did pay for two-thirds of all of the utilities and her own telephone, grocery, insurance, and transportation expenses. Additionally, appellee does some of the housework and cooking in lieu of paying rent. While she and her boyfriend have an intimate relationship and share a bedroom, they have no plan to marry, have no shared debt, and have separate assets and liabilities.

{¶ 11} With regard to appellant, it is undisputed that his total income for the year 2007 was approximately \$79,000-including his pension from "Jeep" and the salary he receives as an over-the-road truck driver. In deducting the spousal support he paid, plus appellee's share of QDRO, appellant still had a 2007 income of about \$56,000. This is slightly over \$1,000 dollars more than his income at the time of the parties' divorce.

{¶ 12} Appellant lives with his father and gives him \$500 per month in "rent," but this money is used to pay a debt incurred by appellant after the divorce, specifically, to

make payments on appellant's new motorcycle, which is titled in his 77 year old father's name. Appellant is also purchasing a time share and pays \$240 per month on its mortgage.

{¶ 13} In considering all the facts offered at the hearing on appellant's motion, we cannot say that the trial court's attitude in determining that the financial conditions of both parties has not substantially changed since the date of their divorce is an abuse of discretion. We also agree with the trial court in finding that a substantial change in circumstances has not occurred because appellee is residing with an unrelated male.

{¶ 14} Under certain circumstances, living with an unrelated male can constitute grounds for the termination or modification of a spousal support award. *Thomas v. Thomas* (1991), 76 Ohio App.3d 482, 485. The legal term that describes this particular circumstance is "cohabitation." *Moell v. Moell*, 98 Ohio App.3d at 752. Cohabitation contemplates a relationship that approximates or is the functional equivalent of a marriage. *Piscione v. Piscione* (1992), 85 Ohio App.3d 273, 275. Whether or not a particular relationship or living arrangement constitutes cohabitation is a question of fact determined by the trial court on a case-by-case basis. *Moell*, supra. Thus, cohabitation requires more than simply living together and having sexual relations; there must be a showing of mutual financial support, a sustained duration of the relationship, as well as other relevant factors. *Id.*, citing *Dickerson v. Dickerson*, 87 Ohio App.3d at 851.

{¶ 15} In the present case, appellee offered undisputed testimony, as set forth above, upon which the trial court could determine that the living arrangement in this cause does not constitute cohabitation as contemplated under the law. We therefore conclude that the trial court's attitude in finding that this was not a substantial change of circumstances is not unreasonable, arbitrary, or unconscionable. Appellant's sole assignment of error is found not well-taken.

{¶ 16} The judgment of the Fulton County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant, Michael C. Schroeder, is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Richard W. Knepper, J.
CONCUR.

JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.