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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/26/10
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN THE MATTER OF:) 1 CA-CV 09-0571
)
MARVIN L. SLAMAN,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
LORI D. SLAMAN,) Civil Appellate Procedure)
)
Respondent/Appellant.)
)
)

Appeal from the Superior Court in Navajo County

Cause No. DO-20080430

The Honorable Michala M. Ruechel, Judge

AFFIRMED

Riggs, Ellsworth & Porter, P.L.C.	Show Low
By Michael R. Ellsworth	
Attorney for Petitioner/Appellee	
Coronado & LaBarge Law Group, P.L.L.C.	Show Low
By Eduardo H. Coronado	
Attorney for Respondent/Appellant	

P O R T L E Y, Judge

¶1 Lori D. Slaman ("Wife") appeals the order which modified her 2004 spousal maintenance award. We find that the trial court did not abuse its discretion in reducing the award.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The parties were married in 1971 and divorced in 2004. The decree ordered Marvin L. Slaman ("Husband") to pay Wife \$1,950 per month in lifetime spousal maintenance.

¶3 Husband petitioned to terminate or, alternatively, modify the spousal maintenance order in 2008. After a hearing, the trial court modified the spousal maintenance order to \$1,200 per month. The court found that Husband continued to be underemployed by choice, and although Wife's mental health had not improved, her expenses had been reduced because she had sold her house and bought another residence mortgage free.

¶4 Wife filed an appeal, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(C) (2003).

DISCUSSION¹

¶5 Wife argues that the family court erred as a matter of law when it considered the financial effect of the sale of her

¹ This court struck Part III of Husband's Answering Brief on April 21, 2010.

separate property. She also contends that the court abused its discretion by finding that a change in circumstances existed to warrant modification.

¶6 We review the family court's determination that there were changed circumstances warranting a modification of spousal maintenance under an abuse of discretion standard. *Van Dyke v. Steinle*, 183 Ariz. 268, 273, 902 P.2d 1372, 1377 (App. 1995). We review related questions of law de novo. *Id.* "The burden of proving changed circumstances is on the party seeking modification." *Scott v. Scott*, 121 Ariz. 492, 494, 591 P.2d 980, 982 (1979).

¶7 Here, the family court found that Wife's reduced living expenses constituted a substantial and continuing change that justified a \$750 decrease in the spousal maintenance award. Wife argues that this change did not legally support a modification. We disagree.

¶8 In *Scott*, the husband liquidated his pension plans and argued that the liquidation and other factors justified a modification of his spousal maintenance obligation. *Id.* at 495, 591 P.2d at 983. The trial court denied his request. *Id.* at 493, 591 P.2d at 981. On appeal, our supreme court held that the transformation of assets from one form to another is not a changed circumstance; asset liquidation may be relevant if

reflective of a change in circumstances, such as an increase in debt. *Id.* at 495, 591 P.2d at 983. The court continued, and stated that the wife's sale of the family home, which resulted in a \$317 decrease in her monthly expenses, *could* be considered a substantial and continuing change in circumstances. *Id.* Specifically, the court stated that "[h]er new lower monthly expenses, however, represent a changed circumstance which, if substantial and continuing, would merit a modification of [the] support payments." *Id.* (emphasis added).

¶9 Here, the trial court correctly recognized that the sale of Wife's home post-decree was not, in and of itself, a changed circumstance warranting modification of spousal maintenance. The reduction in her living expenses that resulted from the sale was, however, properly considered as a substantial and continuing changed circumstance supporting the modification order. Consequently, we find no abuse of discretion.

¶10 Wife also argues that the trial court improperly relied on the appreciation of her property. She contends that appreciation of property awarded to a spouse in a divorce is reasonably foreseeable and, therefore, not a proper basis for modification. *See Marquez v. Marquez*, 132 Ariz. 593, 595, 647 P.2d 1191, 1193 (App. 1982) (holding the appreciation of real property is reasonably foreseeable and cannot support

modification of the spousal maintenance portion of a divorce decree). We agree with the statement of law, but disagree that the trial court relied on any appreciation of the property to modify the spousal maintenance award.

¶11 Wife also argues that the property awarded to her in the decree is her sole and separate property and cannot be modified. See *States v. States*, 124 Ariz. 189, 190, 603 P.2d 81, 82 (1979). We agree, but also find that the trial court only focused on Wife's reduced expenses as directed by *Scott*.

¶12 Wife next argues that she should not be required to use up the proceeds from the sale of the property awarded to her in the decree to support herself. The trial court did not order her to "use up" the proceeds of the sale of the house. Rather, the court considered Wife's reduction of monthly expenses after the sale of the house and purchase of a different residence, and her need of support from Husband. Because the trial court properly considered this evidence to resolve the petition to modify spousal maintenance, *Scott*, 121 Ariz. at 495, 591 P.2d at 983, we find no error.

¶13 Finally, Wife argues that the finding of changed circumstances is not supported by the evidence and, therefore, it was an abuse of discretion to modify spousal maintenance. Specifically, she claims there was no basis for the decision to

reduce support by \$750 per month. The court found Wife's expenses were reduced because she had no mortgage payment and had reduced her cost of living, and those circumstances were substantial and continuing. Moreover, a comparison of Wife's Affidavit of Financial Information ("AFI") filed during the divorce with her November 2008 AFI demonstrates that Wife's monthly living expenses have decreased over \$2,000. Because there is a factual basis to support the trial court's decision, we find no abuse of discretion.

ATTORNEYS' FEES ON APPEAL

¶14 Wife requests an award of attorneys' fees on appeal pursuant to ARCAP 21. Because she is not the prevailing party, we deny her request.

CONCLUSION

¶15 We affirm the modification of the spousal maintenance order.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

PATRICIA A. OROZCO, Judge