James Vincent VALETUTTI v. Kathleen Susan VALETUTTI

CA05-976 __ S. W.3d ___

Court of Appeals of Arkansas
Opinion delivered April 19, 2006

FAMILY LAW – ALIMONY WAS REDUCED BUT CONTINUED INDEFINITELY.– The trial court did not abuse its discretion in ordering that alimony continue indefinitely at a reduced rate; where appellee had two fewer dependents and her income had doubled since the parties' divorce in 1998, the trial court reduced appellee's alimony by more than thirty percent, but found that the appellant continued to have the ability to pay alimony and his obligation should not be terminated.

Appeal from Ouachita Circuit Court; *Michael R. Landers*, Judge; affirmed.

Tim A. Womack, P.A., by: *Tim A. Womack*, for appellant.

Harrell & Lindsey & Carr, P.A., by: *Christina S. Carr*, for appellee.

ROBERT J. GLADWIN, Judge.

Appellant James Vincent Valetutti appeals from the Ouachita County Circuit Court's order filed on June 2, 2005, in which it reduced his monthly alimony obligation to his ex-wife, appellee Kathleen Susan Valetutti. On appeal to this court, appellant argues that the trial court abused its discretion in ordering that alimony continue indefinitely at the reduced but still substantial rate despite proof that appellee no longer needs the alimony. We affirm.

Appellant and appellee were married in 1988, and their only child, a daughter, was born in 1991. Appellee has twin sons from a previous marriage who were minors at the time of the parties' divorce, and appellant has a grown son. In 1997, appellant accepted a job that paid $98,000 per year, and so the parties moved from Maryland to Camden, Arkansas. Soon after they arrived in Arkansas, appellant had an affair with a coworker, and appellee sought a divorce, which was granted on August 4, 1998. Appellee was awarded custody of the parties' daughter, and they returned to Maryland with the court's permission. In the divorce decree, appellant was ordered to pay $1500 per month in alimony and $200 per week in child support. The decree specifically provided that "alimony shall continue until the death of the payee, payor, the remarriage of the payee, other statutory limitations or further orders of this court." In an opinion delivered on October 13, 1999, we affirmed the trial court's award of alimony and child support and its division of the parties' property. *Valetutti v. Valetutti*, CA99-21, slip op. at ___ (Ark. App. Oct. 13, 1999).

On December 9, 2004, appellant filed a petition for termination or modification of alimony. At the hearing on appellant's petition, appellee testified that she purchased her home in Elkton, Maryland, in January 2005 for $118,000 and that her monthly mortgage payment is $1300. She testified that her daughter and her twenty-year-old son currently live with her. She stated that David Miller is her boyfriend of two years but not her fiancé. According to appellee, she has no plans to marry Miller and further explained that "for now I am done with marriage." She testified that she is employed at ATK Alliant Techsystems, formerly Thiokol

Corporation and Cordant Technologies. From 1999 to 2002, she was an administrative assistant/production secretary. She stated that her income for 1999, when she had her two sons as dependents, was $15,813; in 2000, still claiming her two sons as dependents, she earned $18,491; she earned $23,894 in 2001; and in 2002, she earned $25,230. Between 2003 and 2004, she became an accountant for the company after taking night classes at Cecil County Community College. Appellee stated that her company reimbursed her for the cost of the classes. In 2003, appellee earned $27,344, and in 2004, she made $34,290. She stated that her contributions to her 401K plan between 1999 and 2004 totaled approximately $10,000. In 2003, she borrowed approximately $12,000 to pay for home improvements and to pay off some of her credit-card debt. She identified appellant's exhibit listing eleven credit cards, but she stated that she no longer had or used seven of the cards. Appellee testified that, according to her affidavit of financial means, she had $32,000 in a 401K account, $2000 in an IRA account, $800 in a checking account, and $400 in a savings account. Also according to her affidavit of financial means, appellee's expenses totaled $3989 per month. Appellee stated that before her twin boys turned eighteen years old, their biological father paid her $90 per week in child support plus a lump sum of $2000 to pay the arrearage. Appellee stated that, without appellant's alimony payments, she would be unable to pay all of her expenses listed on the affidavit. She stated that her lifestyle had not changed since the parties' divorce and that she was not living more extravagantly or spending more money. Appellee conceded that she currently has two fewer dependents and that her income has doubled since 1998.

Appellant testified that he lives in an apartment in Camden, Arkansas, and that, while he would like to live in a house, he is not currently "emotionally equipped" for that kind of acquisition. He stated that he is the director of contracts for Aerojet General Corporation. He stated that in December 2002 he married Jan Valetutti but had since divorced. Jan paid $80,000 as a down payment on the house they bought for $198,000. He stated that his monthly mortgage payment was $1100, which he paid for two and one-half years, but that he received none of the equity when it was sold following the divorce from Jan. Appellant owed $19,000 on a motorcycle he bought in 2003 and had paid $2200 for its enclosed trailer. He stated that his gun collection was worth $8000; his jewelry was worth $1000; and an ATV four wheeler was worth $2500. He stated that he had approximately $3000 in his checking account and $29,000 in a savings account, $15,000 of which came from a settlement following his involvement in a motor vehicle accident in 2004. Appellant earned $124,392.90 in 2001; $117,753.73 in 2002; $112,416 plus $21,336 in 2003 (he had two W-2 forms because Aerojet purchased Atlantic Research Corporation); and $139,431.46 in 2004 plus $1050 from teaching as an adjunct professor at SAU-Tech for one semester. He had contributed $90,000 to his 401K plan since his divorce from appellee, and it was currently valued at approximately $162,000. Appellant stated that after deductions his monthly income is $2536 and that his monthly expenses total $2070.76. Appellant stated that now that two of appellee's children are grown, appellee no longer has an excuse for not getting an education and that the parties' fourteen-year-old daughter could be left without supervision. Appellant also testified that

there were online classes that appellee could take. He also pointed out that appellee has no health problems or disabilities.

In a modified decree entered on June 2, 2005, the Ouachita County Circuit Court reduced appellant's monthly alimony obligation to $950 and increased his weekly child-support obligation to $274. The trial court made the following findings:

> The evidence confirms that since the divorce of the parties, plaintiff and the minor child have moved to Cecil County, Maryland, and that plaintiff has remained with the same employer, ATK Elkton, LLC, and presently has an annual wage of approximately $32,000.00. At the time of the divorce, plaintiff was earning less than $20,000.00, and her future employment was in doubt. Plaintiff has purchased a comfortable home in Elkton, Maryland, and it would appear that her financial situation has improved considerably since the date of the divorce.
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> The Court further finds that at the time of the divorce, plaintiff had custody of two minor children from a previous marriage who have both since become adults. As a result, there is no doubt but that the financial needs of the plaintiff have been significantly reduced.
>
> The Court further finds that defendant has continued to work for the same employer since the divorce and has experienced a considerable increase in wages, as has the plaintiff. The Court finds that the defendant continues to have the ability to pay alimony and his obligation should not be terminated.

A trial judge's decision whether to award alimony is a matter that lies within his or her sound discretion and will not be reversed on appeal absent an abuse of that discretion. *Davis v. Davis*, 79 Ark. App. 178, 84 S.W.3d 447 (2002). The purpose of alimony is to rectify economic imbalance in the earning power and the standard of living of the parties to a divorce in light of the particular facts of each case. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988). The primary factors that a court should consider in determining whether to award

alimony are the financial need of one spouse and the other spouse's ability to pay. *Id.* The trial court should also consider the following secondary factors: (1) the financial circumstances of both parties; (2) the amount and nature of the income, both current and anticipated, of both parties; (3) the extent and nature of the resources and assets of each of the parties; (4) the earning ability and capacity of both parties. *Anderson v. Anderson*, 60 Ark. App. 221, 963 S.W.2d 604 (1998). The amount of alimony should not be reduced to a mathematical formula because the need for flexibility outweighs the need for relative certainty. *See Mitchell v. Mitchell*, 61 Ark. App. 88, 964 S.W.2d 411 (1998).

On appeal to this court, appellant specifically argues that:

> The judge abused its discretion when ordering alimony to continue *indefinitely* at a lower, but quite substantial rate – despite overwhelming evidence that after James Valetutti paying almost a quarter million dollars in spousal plus child support in the seven years since their ten-year marriage ended, Ms. Valetutti no longer requires alimony, because her needs are substantially decreased, while her prosperity continues to steadily increase, due to: 1) having only one minor child, instead of three, now at home; 2) more education; 3) higher pay from better employment; 4) greater employment benefits; 5) fruits of her fourth marriage's Divorce Decree; 6) greater personal income; 7) better earnings potential; with, 8) considerably less debt; and 9) better credit.

Appellant further argues that it is no longer reasonable or equitable for appellee to receive spousal support that she does not need. He argues that circumstances have changed significantly since their 1998 divorce and the 1999 appeal. Appellant argues that "Ms. Valetutti, with help, has laudably eclipsed her previous circumstances to defy the Arkansas Court of Appeals' 1999 prediction that '... her opportunities for advancement in education and income were limited.'" He lists the following "fruits" of the parties' divorce decree that

went to appellee: (1) over $51,000 from his 401K; (2) 50% of his pension, with 100% retention of her pension; (3) over $4000 in her relocation expenses paid by him; (4) all the marital home's furniture and half its equity; (5) his former $7000 gun collection that she sold; (6) over $2000 in income tax refunds plus $2500 from cashed bonds; (7) debt-free end to her fourth marriage with all credit-card debts going to him; (8) medical and dental insurance he provides for their daughter; and (9) $1500 per month alimony (over $108,000 at filing), plus $800 per month child support. Appellant also argues that his "reliable and lucrative" alimony payments may have deterred appellee's remarriage since she has not remained unmarried for very many consecutive years. Appellant maintains that "equity in this case cries for a cessation of alimony." He argues that "[a]limony under these circumstances is practically enslavement, a form of involuntary servitude the Court forces Mr. Valetutti to perform on behalf of his former spouse." Finally, appellant contends that the alimony in this case has become almost penal in nature.

While we sympathize somewhat with appellant's position, upon de novo review, we simply cannot hold that the trial court abused its discretion. The trial court's findings suggest that it looked to both appellee's improved financial condition and appellant's ability to pay. The fact that appellee's financial situation had "improved considerably" and that her financial needs had been "significantly reduced" caused the trial court to reduce appellee's alimony by more than thirty percent. Although we find no cases where alimony has been ordered indefinitely for such a relatively short-term marriage, it is not prohibited. Presumably, it has

been thought that the need for flexibility outweighs the corresponding need for relative certainty. *See Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982); *Mitchell*, *supra*. Our supreme court has refused to set a bright-line limitation on alimony, and we will not either.

Affirmed.

VAUGHT, AND CRABTREE, JJ., agree.