

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH A. PEDROTTY,	§	
	§	No. 135, 2004
Petitioner Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
CAROL PEDROTTY,	§	File No. CK01-04674
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: September 15, 2004
Decided: September 24, 2004

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 24th day of September 2004, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Joseph Pedrotty appeals from an order of the Family Court denying his request for modification of alimony. The thrust of the appeal is that the Family Court's factual findings are erroneous.

2. In January 2002 Joseph and Carol Pedrotty divorced. On October 8, 2002, the Family Court entered a permanent alimony order requiring Mr. Pedrotty to pay \$2,500 per month to (the former) Ms. Pedrotty.¹

¹ The parties were married for more than twenty years. Therefore, there is no time limit on their eligibility for alimony. 13 *Del. C.* § 1512(d).

3. At the time the alimony order was entered, the Family Court estimated Mr. Pedrotty's annual income at \$100,000 and his monthly expenses, at \$4,652. Ms. Pedrotty's yearly income was estimated at \$10,000, and her monthly expenses, at \$3,264.

4. Six months after the order was entered, Mr. Pedrotty petitioned Family Court for a modification of alimony, under 13 *Del. C.* § 1519(a)(4). Changes in both sides' employment situations formed the basis of Mr. Pedrotty's motion.

5. After a voluntary job transfer, Mr. Pedrotty's annual gross income had decreased to \$76,000. Ms. Pedrotty, on the other hand, expected to earn approximately \$22,000 this year from her job at Boscov's, bringing her annual income (including alimony) to \$52,000.

6. The record of the modification of alimony hearing established Ms. Pedrotty's current monthly expenses at \$3,968.98. There is some confusion in the record as to the amount of Mr. Pedrotty's monthly expenses. After the initial alimony award was entered, Mr. Pedrotty began living with his paramour and sharing expenses with her, based on an undisclosed ratio of their respective incomes. Mr. Pedrotty could not account for his actual expenses and he did not submit his paramour's expenses to the Court. He testified that he "pick[s] up whatever...she can't." Although Mr. Pedrotty testified that his

monthly expenses are \$4,926, he submitted an expense sheet listing his monthly expenses at \$2,602.52. Mr. Pedrotty testified that he cannot determine his exact monthly expenses because he deposits his paycheck directly into a joint account with his paramour, out of which their combined bills are paid.

7. The Family Court found that Mr. Pedrotty's accounting method was "self-designed" and determined that his monthly expenses were \$2,602.52. The court derived that number from the expense sheet that Mr. Pedrotty submitted during the hearing.²

8. Mr. Pedrotty claims that the Family Court's decision was contrary to the law and not supported by the evidence. The standard of review for a modification of alimony decision is abuse of discretion.³ This Court will not disturb findings of fact unless they are plainly wrong. The trial court's inferences and deductions will not be disturbed as long as they are supported

² Order (Mar. 17, 2004) at 3.

³ *J.F.V. v. O.W.V., Jr.*, 402 A.2d 1202, 1204 (Del. 1979).

by the record and are the product of an orderly and logical deductive process.

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⁴ *Sowers v. Sowers*, 550 A.2d 35 (Table) (Del. 1988).

9. The party petitioning for a modification of alimony must demonstrate a real and substantial change in his or her circumstances.⁵ The petitioner must convince the Court that continued enforcement of the award would produce an undue hardship to the obligor, or an undue benefit to the obligee.⁶

10. Mr. Pedrotty argues that the record does not support the Family Court's finding that his monthly expenses are \$2,602.52. He further claims that the decrease in his salary, combined with the increase in Ms. Pedrotty's salary, constitutes a real and substantial change in circumstances.⁷

11. The trial court's findings are consistent with the record. Mr. Pedrotty submitted a monthly expense sheet listing one amount, then testified to an amount nearly double that figure. The Family Court found that because Mr. Pedrotty's funds are completely commingled with those of his paramour he could not substantiate his monthly expenses or establish what portion of whose paycheck was being used.⁸ Mr. Pedrotty has not shown that the Family Court was plainly wrong in determining Mr. Pedrotty's expenses to be

⁵ 13 *Del. C.* § 1519(a)(4).

⁶ *Mason v. Mason*, 571 A.2d 787 (Table) (Del. 1990).

⁷ Appellant's Opening Br. at 5.

⁸ *Pedrotty v. Pedrotty*, No. CK01-04674 at 3 (Del. Fam. Ct. Mar. 17, 2004).

\$2,602.52, especially since that was an amount Mr. Pedrotty himself had proposed. Conversely, although Ms. Pedrotty enjoyed an increase in income, she also incurred an increase in expenses due to breast cancer treatment and a work-related injury.

12. The Family Court properly concluded that Mr. Pedrotty failed to show a change in circumstances so substantial as to create an undue hardship to himself or an undue benefit to his ex-wife. Ms. Pedrotty's increase in income was mitigated by her increased expenses. Similarly, Mr. Pedrotty's loss of income was alleviated by his decreased expenses. The Family Court's conclusion, that Mr. Pedrotty failed to meet his burden, was the result of an orderly and logical deductive process that was supported by the record, and its conclusions were the product of a logical reasoning process.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice