

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000463-MR

RICHARD DAVID HICKERSON

APPELLANT

v. APPEAL FROM HOPKINS FAMILY COURT
HONORABLE SUSAN WESLEY MCCLURE, JUDGE
ACTION NO. 96-CI-00115

MARTHA KAYE HICKERSON

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, KELLER AND STUMBO, JUDGES.

KELLER, JUDGE: Richard Hickerson (Richard) appeals from an order of the Hopkins Family Court modifying his maintenance obligation. For the following reasons, we affirm.

FACTS

Richard and Martha Hickerson (Martha) were married in April 1967 and divorced in March 1996 pursuant to a decree of dissolution. The terms of the decree required Richard to pay Martha \$500 per month in maintenance. On July 8, 2010, Richard filed a motion to modify his maintenance obligation, and the family court held a hearing.

At the hearing, Richard testified that he recently retired from his position as a nurse and that he now receives \$1,474 per month in social security benefits. Richard explained that he was diagnosed with fibromyalgia in 2009 and is unable to return to work. According to Richard, his monthly expenses, including his maintenance obligation, are \$2,452. Richard also testified that he planned to file a bankruptcy petition to avoid some of his debts, including his car payment.

Martha testified that she receives social security disability benefits of approximately \$817 per month and earns approximately \$260 per month for babysitting. Thus, her total monthly income, excluding the maintenance award, is \$1,077. She also testified that she has more expenses now than when the parties were married, which she listed as more than \$2,000. Martha further testified that, even with the \$500 maintenance award, she is unable to meet her monthly expenses.

In its July 8, 2010, order, the family court determined that Richard had experienced a substantial change in his economic circumstances and his earning capacity, and that the change was substantial and continuing. Specifically,

the court noted that, at the time of the dissolution, Richard earned approximately \$2,700 per month, and now only receives \$1,474 per month in social security benefits.

The family court further concluded that Richard's actual monthly expenses are approximately \$1,285. The court found that Richard's reasonable monthly expenses could be reduced to \$925 by eliminating the debts he intended to include in his bankruptcy petition; eliminating the expenses associated with his automobile because it would likely be repossessed; reducing his clothing allowance to \$10 per month to match Martha's; and eliminating the life insurance premium for the parties' son.

The family court also concluded that Martha had experienced a substantial and continuing change in her economic circumstances because of the change in her income. Specifically, the family court noted that, at the time of the parties' divorce, Martha's earning capacity was approximately \$550 per month. Martha's earning capacity at the time of the hearing was approximately \$1,077, excluding the maintenance award.

Further, the family court determined that Martha experienced a voluntary change in her expenses, and that her reasonable monthly expenses could be adjusted to approximately \$1,900 by eliminating a debt that would expire in January 2011; eliminating her social club dues; and reducing her yard, food, cleaning supplies, and beauty shop expenses. The family court also found that,

based on Martha's testimony, her health insurance expense should be reduced to \$289 per month.

The family court concluded that the changes in the parties' circumstances were so substantial and continuing as to make the previous maintenance award unconscionable. Thus, the family court reduced Richard's maintenance obligation by \$50, for a total of \$450 per month. This appeal followed.

STANDARD OF REVIEW

As set forth in *Block v. Block*, 252 S.W.3d 156, 159 (Ky. App. 2007):

We review the family court's determination regarding a motion to modify maintenance for an abuse of discretion. We cannot substitute our judgment for the family court's if there is substantial evidence supporting that court's decision. Further, we may not set aside the family court's factual findings unless they are clearly erroneous.

ANALYSIS

On appeal, Richard first contends that the family court erred by not terminating his maintenance obligation or reducing it by more than \$50 per month. We disagree.

Kentucky Revised Statute (KRS) 403.250 controls modification or termination of maintenance. Subsection (1) of KRS 403.250 states that "the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable." The term "unconscionable" means "manifestly unfair or

inequitable.” *Bickel v. Bickel*, 95 S.W.3d 925, 927 (Ky. App. 2002). “To determine whether the circumstances have changed, we compare the parties’ current circumstances to those at the time the court’s separation decree was entered.” *Block v. Block*, 252 S.W.3d 156, 160 (Ky. App. 2007).

Richard argues that the trial court should have terminated the maintenance award or reduced it by more than \$50, because he and Martha have comparable monthly incomes. In further support of his argument, Richard notes that Martha’s earning potential increased significantly since the time of the dissolution; the increase in Martha’s expenses were made voluntarily; and his only income is his social security benefits.

In determining whether the prior award was unconscionable, the family court took into account the changed circumstances of both parties. Specifically, the court noted that Richard’s monthly income had decreased, and that Martha’s earning potential increased. However, Martha’s expenses increased as well. Although some of the increases in her expenses were voluntarily made, the family court reduced Martha’s expenses to reflect her actual and reasonable expenses. Likewise, the family court decreased Richard’s expenses to reflect his actual and reasonable expenses. Thus, we cannot say that the family court abused its discretion by only modifying Richard’s maintenance obligation by \$50.

Richard also contends that the trial court incorrectly calculated his expenses. Specifically, he argues that the trial court erred in concluding that he would not have any expenses related to a vehicle, because his vehicle was going to

be repossessed. Richard contends that he is still entitled to reasonable transportation expenses, including a car payment, insurance, gas, taxes, and licensing.

As noted above, Richard testified that he planned to file a bankruptcy petition to avoid some of his debts, including his car payment. Based on this testimony, we believe there was substantial evidence to support the family court's conclusion that Richard would not have any expenses related to a vehicle. Thus, we cannot say the family court abused its discretion.

CONCLUSION

For the foregoing reasons, the order of the Hopkins Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jennifer Sacharnoski Nelson
Princeton, Kentucky

BRIEF FOR APPELLEE:

J. Keith Cartwright
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