

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001177-MR

DAVID WILLIAMSON

APPELLANT

APPEAL FROM GREENUP CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 07-CI-00252

LISA RENEE WILLIAMSON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; COMBS AND TAYLOR, JUDGES.

TAYLOR, JUDGE: David Williamson brings this appeal from a June 4, 2012, order of the Greenup Circuit Court, Family Court Division, denying his motion to terminate maintenance. We affirm.

David and Lisa Renee Williamson were married approximately twenty years. One child, Emily, was born of the marriage on January 25, 1991,

and suffers from severe disabilities. The parties were divorced by decree of dissolution of marriage entered August 17, 2007. In the decree, the family court found that Lisa suffered from a medical condition and had not worked outside the home for over thirteen years to stay home and take care of the parties' autistic child. The court noted that the parties' sixteen-year-old child was unable to read or write and needed assistance bathing, dressing and going to the restroom. David, on the other hand, was employed with Marathon Oil and earned approximately \$105,000 per year in salary. Due to Emily's disability, the family court ordered an open-ended maintenance award of \$1,000 per month to Lisa. No appeal was taken from the August 17, 2007, decree.

On April 4, 2012, David filed a Motion to Terminate Maintenance. Therein, David asserted that Emily had reached "the conclusion of her schooling in the public school system"¹ and, thus, a material change in circumstances warranting modification of maintenance had occurred. David sought the complete termination of maintenance and a hearing ensued. By order entered June 4, 2012, the family court denied David's motion to terminate maintenance. In that order, the circuit court noted that David's annual salary had increased to \$147,000 and again emphasized that Lisa had not worked outside the home for now over seventeen years and would not readily be able to reenter the work force, given she remained the primary caregiver for Emily. This appeal follows.

¹ Emily completed her education in the public school system at the age of twenty-one in May 2012. Emily had an approximate intelligence quotient (IQ) of 40 and functioned as a three- or four-year-old child. She received a certificate of completion because she "aged out school."

David contends that the family court erred by denying his Motion to Terminate Maintenance. When the family court ordered the open-ended maintenance award in 2007, David argues that it was based upon Emily's still being enrolled in school and thus her completion of school in 2012 constitutes a material change in circumstances justifying the termination of maintenance.

The modification of an open-ended maintenance award is governed by Kentucky Revised Statutes (KRS) 403.250(1). *Massey v. Massey*, 220 S.W.3d 700 (Ky. App. 2006). KRS 403.250(1) states, in relevant part:

(1) Except as otherwise provided in subsection (6) of [KRS 403.180](#), 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. . . .

And, the burden of proof is upon the party seeking modification of the award.

Danhauer v. Danhauer, 295 S.W.3d 154 (Ky. App. 2009) (citing *Bickel v. Bickel*, 95 S.W.3d 925 (Ky. App. 2002)). Therefore, David must demonstrate that a material change in circumstances occurred that is so substantial and continuing as to render the terms of the maintenance award to Lisa unconscionable. See KRS 403.250(1).

In the case *sub judice*, the original award of maintenance was based on Lisa's medical condition and the necessity of her devoting daily care for Emily, given Emily's disability and the substantial amount of care she demanded. As a result, Lisa did not obtain full-time employment outside the home. The mere fact that Emily is no longer attending school does not negate Emily's ongoing disability

or Lisa's responsibility to care for Emily. In fact, the record reflects Emily now spends more time at home, and Lisa is tasked with providing more care than when Emily was attending school. As noted, the original award of maintenance was not appealed. We find no error in the family court's conclusion that Emily's completion of school in the public school system was not a material change in circumstances so substantial and continuing as to render the terms of the maintenance award unconscionable. Accordingly, we hold that the family court properly denied David's motion to terminate maintenance.

For the foregoing reasons, the order of the Greenup Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Monica Hill
Morehead, Kentucky

BRIEF FOR APPELLEE:

Rhonda M. Copley
Ashland, Kentucky