

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001473-MR

REID HUNTER WILSON, M.D.

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE SHEILA N. FARRIS
ACTION NO. 11-CI-00376

SARAH SPRAGUE WILSON

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, CHIEF JUDGE, JONES AND J. LAMBERT, JUDGES.

JONES, JUDGE: This appeal arises out of an order from the Henderson Family Court (hereinafter "family court") denying Appellant Reid Hunter Wilson, M.D.'s motion to reduce support, modify maintenance and modify property settlement agreement. Reid requests this Court to vacate the family court's order and remand

this matter for an evidentiary hearing. For the reasons more fully explained below, we AFFIRM.

I. BACKGROUND

Reid Hunter Wilson and Sarah Sprague Wilson were married on December 30, 1997. During their marriage, the parties had two minor children; their first child was born in 2000 and their second child was born in 2003. Reid and Sarah separated on August 1, 2010. Reid subsequently filed a petition for dissolution of his marriage with Sarah on May 24, 2011.

The family court set a final hearing in the dissolution action for January 24-25, 2012. Prior to the hearing, the parties reached an agreement on child custody and property settlement. The parties memorialized their agreement in a written document styled "Child Custody and Property Settlement Agreement," which they signed on January 25, 2012. On May 8, 2012, the family court entered a final dissolution decree. The decree incorporates the Agreement in full.

Pursuant to the terms of the Agreement, Reid is required to make the following payments to Sarah: (1) maintenance in the amount of \$8,400 per month for ten years assuming Sarah does not remarry, followed by maintenance thereafter for ten years at a rate no greater than \$2,100 per month; (2) child support in the amount of \$3,600 per month for ten years, commencing April 1, 2012, regardless of the age of the children during the ten years; (3) health insurance coverage for the two minor children currently in the amount of \$250 per month; (4) medical expenses on behalf of the two minor children currently in the amount of \$355 per

month; (5) a property settlement payment in the amount of \$3,100 per month beginning April 1, 2012, and ending January 6, 2029; and (6) life insurance premiums for a life insurance policy in a face amount sufficient to equal the entire outstanding obligation to Sarah for child support, maintenance, and property settlement plus the sum of \$500,000 in favor of each child for ten years following the date of the Agreement. The premiums are currently \$444 per month. The Agreement also required Reid to satisfy a debt secured by a 2008 Mercedes driven by Sarah and to make a balloon payment to Independence Bank in the amount of \$115,114.42 on or before April 1, 2014.¹

During the parties' marriage, Reid worked as an orthopedic surgeon at Community Methodist Hospital in Henderson, Kentucky, earning approximately \$950,000 in yearly gross income. On September 9, 2011, after the parties separated, but before entry of the final dissolution decree, Community Methodist Hospital notified Reid that it was terminating his contract of employment effective March 25, 2012. Reid was able to secure a new contract of employment with Cooperative Health Services Inc., an affiliate of Owensboro Medical Health System Inc., which operates Mercy Hospital in Owensboro, Kentucky. Under the terms of Reid's new contract of employment, his base salary was to be \$500,000 per year. Reid was eligible to receive additional compensation if he worked more than 8,065 relative value units ("RVUs"). Reid began working under this new contract on April 1, 2012, shortly before the parties entered into the Agreement.

¹ Reid has satisfied the debt with respect to the Mercedes.

According to Reid, both he and Sarah believed that his total gross compensation under the new contract would be approximately \$700,000 to \$750,000 per year within twelve months of the commencement of his employment. Reid maintains that the parties negotiated their Agreement based on this assumption.

As it turned out, however, Reid's total gross compensation under the new contract was approximately \$501,840, only slightly higher than his base. As a result, on May 7, 2013, Reid filed a motion to reduce child support, modify maintenance, and modify the property settlement agreement with the family court. Reid's motion sought: a reduction in child support from \$3,600 per month to \$1,844 per month; a reduction in maintenance from \$8,400 per month "to some lesser amount per month through March 1, 2022, as is not unconscionable, before reverting to the terms of the Agreement regarding maintenance obligations for the second ten-year period; and a reduction in the monthly property settlement payment from \$3,100 to \$2,100 per month.

Reid explained the basis of his motion as follows:

In general, the grounds for this motion center around Reid's diminished capacity to earn income following the permitted termination of his contract with Methodist Hospital ("Methodist") and his re-employment with Cooperative Health Services Inc., an affiliate of Owensboro Health ("Owensboro Health"), at a much lower annual salary. It is further justified by the income now being earned by Reid's ex-wife, Sarah Sprague Wilson ("Sarah"). Sarah did not earn income when the

parties executed the Agreement based upon their mistaken assumption that Reid would earn approximately \$700,000.00 to \$750,000.00 per year with Owensboro Health. The parties were mutually mistaken as to Reid's earning capacity, which has not approached the amount he expected to receive from Owensboro Health. Reid's inability to earn expected income and Sarah's new income constitute a material change in circumstances that is substantial and continuing. The change justifies a modification of Reid's current child support obligation. It renders Reid's maintenance obligation, also based upon mutual mistake, manifestly unfair, unreasonable, and unconscionable. Finally, and also because of the mistake of the parties regarding Reid's expected income at the time of the execution of the Property Settlement Agreement, a reopening [of] that Agreement is warranted under CR^[2] 60.02 and Kentucky law.

(R. at 309).

The family court set Reid's motion for a hearing on July 30, 2013.

Prior to that date, the parties filed various pretrial disclosures with the family court.

On July 30, 2013, the family court heard the arguments of counsel, but did not conduct an evidentiary hearing. The family court ultimately denied Reid's motion as follows:

The Court finds that there was no mistake at the time the agreement was entered into as the Financial Disclosures reflected Husband's income would be \$500,000.00. . . . Although Husband argues that the agreement is unconscionable, the Court of Appeals decision in *Peterson v. Peterson*, 583 S.W.2d 707 (Ky. App. 1979), contains broad analysis of KRS 403.250 and of separation agreements in general. It held that a bad bargain and unconscionability were not synonymous. While recognizing that "a rather harsh settlement" had been reached, the court gave great deference to the view of the trial court. "It would appear that in cases of this

² Kentucky Rules of Civil Procedure.

nature the trial court is in the best position to evaluate the circumstances surrounding the agreement." *Id.* at 712. *Shraberg v. Shraberg*, 939 S.W.2d 330, 333 (Ky. 1997).

The Court has previously found that the property settlement agreement between Husband and Wife was not unconscionable on the Decree of Dissolution that was executed by counsel for both parties. The controlling statute expressly states "the provisions of maintenance may only be modified upon a showing of changed circumstances so substantial and continuing as to make terms unconscionable." KRS 403.250(1). The Court finds that the fact Wife is now employed earning \$30,000.00 per year and that Husband earns \$500,000 (as contemplated in the original disclosures) one year after the decree of dissolution was entered incorporating the settlement agreement is not a substantial and continuing change in circumstances to warrant the agreement [] unconscionable.

(R. at 449).

This appeal followed. Reid's main argument on appeal is that the family court erred by failing to conduct a full evidentiary hearing on Reid's motion. Reid asserts that "this failure resulted in the [family] court being unable to consider the changed circumstances that had occurred since the entry of the May 8, 2012 Decree."

II. ANALYSIS

A. Modification of Child Support

Pursuant to KRS³ 402.213(1), a family court may modify the provisions of any decree respecting child support "only upon a showing of a

³ Kentucky Revised Statutes.

material change in circumstances that is substantial and continuing." The burden of establishing a material, substantial, and continuing change in circumstances rests with the party moving for modification. *Daunhauer v. Daunhauer*, 295 S.W.3d 154, 157 (Ky. App. 2009).

Reid argues that the family erred because it did not conduct a formal evidentiary hearing on his motion to modify. The modification statutes do not explicitly require the trial court to conduct an evidentiary hearing. We believe that a hearing is unnecessary if the record contains sufficient, uncontested evidence to enable the trial court to make an informed decision on the motion.

In this case, we believe the record contained such evidence. Reid based his motion on the alleged unanticipated change in his income and the corresponding change in Sarah's income. He did not allege any change in the needs of the children. Sarah did not dispute that she was unemployed at the time of the decree, and now grosses approximately \$30,000 per year.

The only issue in "dispute" was whether Reid's change in income was unanticipated when the parties negotiated the Agreement. Reid asserted in his affidavit that the parties expected that he would earn around \$700,000 to \$750,000 during his first year working under his new contract. However, as observed by the family court, the record clearly refutes Reid's assertion in this regard. Reid's financial disclosure, which he signed on January 16, 2012, *before* he signed the

Agreement with Sarah, indicated that he believed his income would be approximately \$500,000:

Petitioner has signed a contract of employment with Cooperative Health Services, Inc., an affiliate of Owensboro Medical Health System, Inc., which operates Mercy Hospital in Owensboro, Kentucky. . . . at a base salary of \$500,000.00 per year. . . . Due to the substantial additional established competition in the field of orthopaedic surgery in Owensboro, Kentucky and petitioner's necessity to establish himself in such geographical area, *petitioner does not anticipate any income in excess of his base salary during at least the first year of his employment.*

(R. at 207) (emphasis added).

Reid stated in his motion to modify that he grossed approximately \$500,000 during his first year with Owensboro Health. This was exactly the same amount he averred in January, 2012, prior to his agreement with Sarah, that he expected to make during his first year. Accordingly, we conclude that the family court correctly determined that Reid failed to sustain his burden of proof with respect to a change in his income.

With respect to Sarah, it was undisputed that her income had gone from nothing to \$30,000 due to her reentering the work force. A hearing was unnecessary with respect to this change. The question is whether the family court correctly determined that this change was not substantial.⁴ The family court determined that the fact that Sarah is now earning \$30,000 per year just one year

⁴ In this case, the child support guidelines of KRS 403.212 are inapplicable because the parties combined monthly adjusted parental gross income exceeds the uppermost level of the guidelines. KRS 403.211(3)(e)). Therefore, the 15 percent presumptions of KRS 403.213(2) are inapplicable.

after the dissolution, when compared with Reid's annual income of \$500,000 with no resulting change in the children's needs, was not a "significant change."

Sarah went from being unemployed to earning approximately 6% of Reid's gross income. We agree with the family court that this hardly constitutes a "substantial and continuous" change in the parties' financial circumstances. Therefore, we conclude that the family court properly denied Reid's motion to modify his child support obligation.

B. Maintenance Obligation

The modification of maintenance awards is governed by KRS 403.250, which provides, in part, that the "provisions of any decree respecting maintenance may be modified only upon showing of changed circumstances so substantial and continuing as to make the terms unconscionable." KRS 403.250(1). "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. 2008). The family court's decision to deny a modification of a maintenance award is reviewed for abuse of discretion. *Id.* at 159. We may only disturb the court's conclusions if it "abused its discretion or based its decision on findings of fact that are clearly erroneous." *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003). The family court abuses its discretion when its decision is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Artrip v. Noe*, 311 S.W.3d 229, 232 (Ky. 2010).

The family court concluded that the Agreement was not unconscionable at the time the parties entered into it. It further concluded that Reid had not demonstrated a substantial change in his income since entry of the decree. We agree.

As set forth above, at the time of the decree Reid was working under a new contract with a base salary of \$500,000 per year. He indicated to the family court in his financial disclosures that he did not expect to make any more than his base salary of \$500,000 for at least his first year of employment. When Reid filed his motion to modify, his circumstances were identical to his circumstances at the time of the decree. Accordingly, Reid failed to properly support his motion. Likewise, we agree that Sarah's salary of \$30,000, by itself, does not constitute a substantial change in circumstances.

C. Property Settlement

Provisions in a divorce decree regarding property disposition "may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state." KRS 403.250(1). The reopening of a judgment under Kentucky law is governed by CR 60.02. "The decision as to whether to grant or to deny a motion filed pursuant to the provisions of CR 60.02 lies within the sound discretion of the trial court." *Age v. Age*, 340 S.W.3d 88, 94 (Ky. App. 2011). The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion. *Grundy v. Commonwealth*, 400 S.W.3d 752, 754 (Ky. App. 2013).

An evidentiary hearing, while often requested by a CR 60.02 movant, is not always warranted. Indeed, “[b]efore [a] movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). An evidentiary hearing is certainly not necessary to consider issues already refuted by the record.

In his appellant brief, Reid states, "the point here is that the parties settled on the expectation that Reid would earn somewhere between \$500,000 and \$825,044 per year." Reid alleged in his motion to modify that he earned a gross income of approximately \$41,280 per month. This equates to an annual gross income of \$501,840. This is in the range upon which Reid states the settlement agreement was based. Moreover, it comports with the salary Reid stated in his January 2012 filing that he expected to make during his first year with Owensboro Health.

The record clearly refuted Reid's allegations that there was a mistake regarding his anticipated income. Given the record, we cannot agree with Reid that the family court was required to hold an evidentiary hearing. Likewise, we cannot agree with Reid that the family court abused its discretion when it denied Reid's request to reopen his property settlement agreement with Sarah.

III. CONCLUSION

For the reasons set forth above, we affirm the family court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Frank Stainback
Owensboro, Kentucky

BRIEF FOR APPELLEE:

Susie H. Moore
Allison B. Rust
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