

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-000587-MR

BRADLEY H. PRUITT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DEANA C. MCDONALD, JUDGE  
ACTION NO. 06-CI-503955

ELLEN BIELEFELD PRUITT

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, DIXON AND STUMBO, JUDGES.

COMBS, JUDGE: Bradley H. Pruitt appeals from an order of the Jefferson Family Court denying his motion to reduce or terminate his maintenance obligation to Ellen Bielefeld Pruitt. Bradley contends that the trial court abused its discretion by failing to modify maintenance. Having considered the record, the parties' briefs, and the applicable case law, we affirm.

The parties were married on August 10, 1991. Ellen filed a petition for dissolution of the marriage on October 17, 2006. On September 24, 2009, they obtained a decree of legal separation. The decree incorporated the parties' agreement that Bradley would pay maintenance to Ellen in the sum of \$1,300 per month beginning on December 1, 2009. Their agreement acknowledged Ellen's health condition. She suffers from Autoimmune Retinopathy, a degenerative eye disease which, if untreated, could result in blindness. It also recognized the disparity in their earning capacities. They agreed that "the amount of this maintenance award shall be reviewable by the parties January 1, 2014, so that their respective incomes and reasonable needs may be reviewed to determine if a modification in the award amount is appropriate."

The court entered a decree of dissolution of the twenty-one-year marriage on March 19, 2012. At the time of their agreed order, Ellen's monthly income was approximately \$1,875 with monthly expenses of \$6,500 (largely attributable to the expenses of her eye condition). Bradley, an attorney, had an income of approximately \$7,000 per month.

In August of 2013, Ellen began receiving social security disability benefits in the amount of approximately \$1,300 per month. Citing that disability award as a change in circumstances, Bradley filed a motion to reduce or terminate his maintenance obligation on August 27, 2014. Ellen responded with a motion for an increase in maintenance. The parties exchanged financial information, and the matter was scheduled for a hearing.

Following the hearing, the family court entered an order denying the motions of both parties. The court found that Ellen suffered with a degenerative eye condition that required expensive, on-going medical treatment. The court found that although Ellen had been awarded more than \$1,300 monthly in social security disability benefits on the basis of this condition, her “income had dropped significantly” since she was unable to work on a full-time basis. Nevertheless, the court was not persuaded that either party had shown that “a change of circumstance has occurred sufficient to support the requested modification.” Based upon the disparity in the parties’ financial resources, the court awarded Ellen her legal fees and costs. The order denying the parties’ motions was entered on February 27, 2015. This appeal followed.

In his appeal, Bradley argues that he was entitled to a reduction or termination of his maintenance obligation because of a material change in circumstances – namely, Ellen’s receipt of social security disability benefits.

An agreement governing a maintenance obligation may be modified by agreement of the parties or a showing of changed circumstances “so substantial and continuing as to make the terms of the award unconscionable.” *Castle v. Castle*, 266 S.W.3d 245 (Ky.App. 2008). The burden of proof is upon the party seeking a modification of maintenance. *Daunhauer v. Daunhauer*, 295 S.W.3d 154 (Ky.App. 2009) (citing *Bickel v. Bickel*, 95 S.W.3d 925 (Ky.App. 2002)).

We review a family court’s order on a motion to modify maintenance in order to determine whether its decision constituted an abuse of discretion. *Block*

*v. Block*, 252 S.W.3d 156 (Ky.App. 2007). We must defer to the family court’s findings of fact unless they are clearly erroneous. *Id.* We may not disturb those findings if they are supported by substantial evidence. *Barbardine v. Barbardine*, 925 S.W.2d 831 (Ky.App. 1996).

As the basis of his appeal, Bradley relies on this Court’s decision in *Daunhauer, supra*. In *Daunhauer*, we observed that the goals of our maintenance statutes, KRS<sup>1</sup> 403.200 and KRS 403.250, are “rehabilitation, self-sufficiency, and stability.” Bradley argues that it is both “unfair and unreasonable” for him to continue to give to Ellen \$1300 per month under their original agreement when she now receives that amount in social security disability benefits.

The family court considered the principles of self-sufficiency and stability as discussed in *Daunhauer*. It observed that at the time of their agreement, the parties were aware of the progressive nature of Ellen’s medical condition. The court concluded that the language of the agreement “indicates an intent to provide [Ellen] with support in light of her declining vision and inability to continue to work full time to support herself.” While it acknowledged the value of Ellen’s monthly social security disability benefit, the family court found that her earned income had decreased substantially. The court found that Bradley had the financial resources necessary to continue to pay the maintenance as previously agreed upon in the decree of dissolution.

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<sup>1</sup> Kentucky Revised Statutes.

The family court heard testimony from both parties regarding their income and expenses. It was in the best position to weigh the evidence and to assess the credibility of the witnesses. CR<sup>2</sup> 52.01. After considering the evidence, the family court concluded that Ellen was not financially independent. After our review of the record and the pertinent law, we are persuaded that substantial evidence supports the family court's conclusion. Thus, the family court did not abuse its discretion.

We affirm the order of the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

William D. Tingley  
Louisville, Kentucky

BRIEF FOR APPELLEE:

William Dennis Sims  
Louisville, Kentucky

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<sup>2</sup> Kentucky Rules of Civil Procedure.