

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000449-MR

MARTIN HOAGLAND

APPELLANT

v. APPEAL FROM SIMPSON FAMILY COURT
ACTION NO. 16-CI-00055
TRANSFERRED FROM ALLEN FAMILY COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 13-CI-00407

ERICA HOAGLAND

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, J. LAMBERT, AND MAZE, JUDGES.

JONES, JUDGE: In this post-dissolution matter, the Appellant, Martin Hoagland, asserts that the Simpson Family Court¹ erred when it terminated Martin's maintenance obligation effective February 1, 2016, the date Martin filed his

¹ The case was transferred from Allen County to Simpson County after the order on appeal was entered, but prior to the filing of the notice of appeal.

motion, as opposed to some earlier date, such as the date his former wife began cohabitating with her fiancé. Having carefully reviewed the record, we find no error. The family court applied the law with respect to maintenance as set forth by our Supreme Court. While we acknowledge that Martin's argument represents an alternative (and perhaps more equitable approach), neither the family court nor this Court has the authority to disregard precedent from our Supreme Court.

I. Background

On April 13, 2013, the circuit court for Anne Arundel County, Maryland, entered a judgment of divorce, thereby ending the marriage of Martin and Erica. Martin was ordered to pay Erica \$800 per month in rehabilitative alimony for a three-year period beginning April 15, 2013. Thereafter, Erica and the parties' minor child moved to Kentucky and Martin moved to Illinois. The matter, including all issues related to maintenance and child support were transferred to Kentucky. Thereafter, a substantial amount of litigation ensued between the parties with respect to child support, visitation, and spousal support.

Related to the current appeal, on January 28, 2016, Martin moved the family court to terminate his maintenance obligation because Erica had begun cohabitating with her fiancé. Following a hearing, the family court determined that Erica began cohabitating with her fiancé sometime between October 16 and October 21, 2015, and terminated Martin's maintenance obligation effective February 1, 2016.² Neither Martin nor Erica dispute this finding on appeal.

² As noted Martin actually filed his motion to terminate at the end of January 2016. The circuit court terminated maintenance effective February 1, 2016, instead of using the exact date Martin

Likewise, Erica does not dispute the family court's decision to terminate maintenance based on her cohabitation effective the date Martin filed his motion to terminate. The only issue presented by this appeal is whether the family court erred in failing to make its order terminating maintenance retroactive to October of 2015, when it found the cohabitation began.

II. Analysis

On appeal, Martin argues that the family court erred as a matter of law in concluding that maintenance could only be terminated from the date he filed his motion rather than the date cohabitation began. Erica contends that the family court did not err in its ruling. Since the issue at hand is one of law, not fact, our review is *de novo*.

In this case, there is no dispute that maintenance was properly terminated based the trial court's findings that Erica enjoyed reduced expenses when she began cohabitating with her fiancé in October of 2015. *See Combs v. Combs*, 787 S.W.2d 260 (Ky. 1990). The only dispute concerns whether the family court should have terminated maintenance retroactive to the inception of the cohabitation. Martin argues that since he did not actually make the payments at issue, they were not vested, and therefore, the trial court had the discretion to make its order retroactive to the date cohabitation commenced. We disagree.

“Past due payments for . . . maintenance become vested when due.

Each payment is a fixed and liquidated debt which a court has no power to

filed his motion. The reason is unclear. However, neither party has raised this issue; therefore, we will not address the four-day difference.

modify.” *Pursley v. Pursley*, 144 S.W.3d 820, 828 (Ky. 2004). The one exception to this rule that our courts have recognized is that a retroactive reduction in maintenance can be ordered by a trial court “when circumstances delay a case from being submitted for decision.” *Mudd v. Mudd*, 903 S.W.2d 533, 534 (Ky. App. 1995). The delay this Court discussed in *Mudd* was judicial in nature. In other words, the delay that occurred *after* the movant filed his motion.³ As a result, the *Mudd* court held the trial court could terminate maintenance retroactive “from the filing of the motion to the entry of judgment.” *Id.* at 534. However, neither *Mudd* nor the cases applying it suggest that the trial court has the power to make a modification retroactive prior to a motion being filed.⁴

In conclusion, *Pursley* is clear that once a maintenance payment becomes due, it has vested. It is likewise clear that a family court has no power to modify a vested maintenance payment. The only exception to this general rule that has been recognized to date is that a court may modify an award retroactive to the date of the motion to modify. While Martin’s arguments concerning his wife’s

³In an unpublished opinion, a panel of this court explained that filing a motion, which places the opposing party on notice that the obligation is being contested, prevents a full vesting. See *Childers v. Childers*, No. 2012-CA-000972-MR, 2013 WL 6046059, at *4 (Ky. App. Nov. 15, 2013) (cited for illustrative purposes only).

⁴ The parties have primarily relied on Kentucky law, both before the family court and before this Court. At the end of the Appellant’s brief, however, he notes that the decree at issue was entered in Maryland. He then cites the case *Langston v. Langston*, 764 A.2d 378 (Md. 2000), for the proposition that under Maryland law the trial court had the discretion to modify maintenance to a date preceding a motion. While *Langston* did permit such a result, in that case, the appellate court found that the movant presented the trial court with compelling reasons to justify a retroactive award, a massive change in income, which his counsel alerted his former wife to well before the motion was filed. In this case, even if *Langston* was applied, we find no error as no compelling circumstances were presented to the family court.

cohabitation have some equitable appeal, we cannot reconcile them with *Pursley* or *Mudd*. Therefore, we must affirm the family court. If Martin is to receive any relief, it must come from our Supreme Court as we, like the family court, are bound by precedent.

III. Conclusion

For the foregoing reasons, the order of the Simpson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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