

MARTIN J. DAVIES

*

NO. 2018-CA-0453

VERSUS

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COURT OF APPEAL

JANET LABATUT DAVIES

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

CONSOLIDATED WITH:

CONSOLIDATED WITH:

JANET LABATUT DAVIES

NO. 2018-CA-0454

VERSUS

MARTIN J. DAVIES

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2012-04553 C\W 2009-05534, DIVISION "H-12"
Honorable Monique E. Barial, Judge

Judge Daniel L. Dysart

(Court composed of Judge Daniel L. Dysart, Judge Joy Cossich Lobrano, Judge Dale N. Atkins)

LOBRANO, J., CONCURS IN THE RESULT

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AFFIRMED, AS AMENDED

NOVEMBER 14, 2018

Martin J. Davies appeals a judgment sustaining Janet Labatut Davies' Exceptions of Prematurity and No Cause of Action, which were filed in response to his Motion to Terminate Final Periodic Spousal Support. Janet Labatut Davies answers the appeal arguing that the trial court erred in granting Mr. Davies' Motion to Terminate Payment of Health Insurance Premium. She also requests that this Court address the ruling of the trial court finding her Exception of *Res Judicata* moot. For the reasons that follow, we amend the judgment and affirm, as amended.

BACKGROUND:

The parties were married in 1989, and were divorced by a judgment signed December 6, 2013. Two daughters were born of the marriage, one of whom had reached majority at the time of the subject hearing. On January 28, 2015, the

parties entered into two consent judgments. One judgment concerned support for the parties' two children, spousal support, car insurance and cellphones for the two children, tuition and living expenses for college for both children, health insurance for both children and Ms. Davies, and beneficiaries on Mr. Davies' retirement accounts and life insurance. The other judgment was relative to the partition of community property, including sale of the family home, retirement accounts, vehicles, movables in the family home, and debts.

In January of 2017, the trial court heard several motions filed by the parties. Specifically, Mr. Davies filed a Motion to Enforce Consent Judgment Partitioning Community Property, and a Motion to Modify Beneficiary Designation and to Reduce Spousal Support, and to require that all reimbursement requests submitted by Ms. Davies be submitted within thirty days of payment. Ms. Davies filed a Rule for Contempt and Exceptions of No Cause of Action and *Res Judicata* regarding Mr. Davies' motions to modify spousal support and beneficiary designation.

Following the hearing, two judgments were issued. The considered judgment recognized that Ms. Davies was entitled to fifty percent of Mr. Davies' Tulane University retirement funds from the date of marriage until the date the petition for divorce was filed. Additionally, a consent judgment¹ was entered into by the parties recognizing that Mr. Davies was in contempt of the January 2017 judgment for failure to pay cell phone bills for his two daughters, car insurance for his eldest daughter, and failure to designate his two daughters as beneficiaries on his Tulane retirement account. Mr. Davies was found not to be in contempt for

¹ Although this judgment is entitled "Consent Judgment," from our reading of the hearing transcript, it appears to be a considered judgment.

failure to pay the non-covered cost of his eldest daughter's wisdom teeth extraction. Additionally, Mr. Davies was ordered to pay Ms. Davies' court costs and attorney fees.

The trial court also sustained Ms. Davies' Exception of No Cause of Action regarding Mr. Davies' motion to modify spousal support, and her Exception of *Res Judicata* regarding his motion to modify beneficiaries on his Tulane retirement account.

In December of 2017, Mr. Davies filed a Motion to Terminate Final Periodic Spousal Support and Payment of Health Insurance Premium. Ms. Davies responded by filing Exceptions of Prematurity, *Res Judicata* and No Cause of Action. A hearing was held on February 28, 2018, and the judgment from which this appeal arises was rendered on March 26, 2018. In that judgment, the trial court sustained Ms. Davies' Exceptions of No Cause of Action and Prematurity and held that the granting of the other exceptions rendered the Exception of *Res Judicata* moot. The trial court overruled Ms. Davies' Exception of No Cause of Action as to the motion to terminate payment of insurance premiums.²

This appeal and answer to appeal follow.

DISCUSSION:

In his first assignment of error, Mr. Davies argues that the trial court committed legal error by failing to interpret the language of the January 2015

² A judgment was originally signed on March 20, 2018, part of which was sustaining Ms. Davies' Exception of No Cause of Action as to the motion to terminate payment for insurance; however, in preparing requested reasons for judgment, the trial judge found discrepancies between the March 20 judgment and her handwritten notes. A telephone conference was held, and the parties consented to the grant of a new trial on the court's own motion. A new judgment was rendered on March 26 and is the basis for this appeal.

consent judgment in accordance with Louisiana Civil Code art. 2050.³ His second assignment of error relates to the two conditions contained in the clause of the consent judgment addressing support.

Mr. Davies asks this Court to look to the intent of the parties when the consent judgment was prepared. He argues the terms of the consent judgment create an additional obligation directed to him. Specifically, he argues that it was the intent of the parties that he continue to pay the \$4,500.00 per month if child support ended by operation of law **and** Ms. Davies had not yet accessed her share of his retirement accounts (the two conditions). According to Mr. Davies, as Ms. Davies had received her monies from the sale of the family home, and is receiving income from her share of Mr. Davies' retirement accounts, he is entitled to terminate the final periodic spousal support.

A trial court's decisions concerning modifications of support are reviewed under an abuse of discretion standard. *Gebhard v. Gebhard*, 10-1412, p. 5 (La.App. 4 Cir. 2/16/11), 60 So.3d 717, 720. An appellate court's role is not to determine if the factfinder's decision is right or wrong, but, rather, whether the decision is reasonable. *Id.*

The subject clause in the January 2015 consent judgment reads as follows:

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that **MARTIN J. DAVIES** shall pay **JANET LABATUT DAVIES** \$4,500.00 per month. That amount includes \$2,650.00 designated as child support, and \$1,850.00 as permanent spousal support. This shall begin after **JANET LABATUT DAVIES** moves out of the family home. Until then, **MARTIN J. DAVIES** shall continue to pay the expenses for the family home. Once child support ends and in the event **JANET LABATUT DAVIES** is unable to access her

³ La.Civ.C. art. 2050 provides: "Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole."

share of the UNI SUPER retirement account that is to be rolled over to her in the community property partition, then **MARTIN J. DAVIES** shall continue to pay \$4,500.00 per month to **JANET LABATUT DAVIES** and have the matter reset in court to determine whether that amount should be reduced.

The consent judgment relative to the community property that was signed the same day indicates that Ms. Davies was to receive fifty percent of all retirement monies in all accounts in “Australia and the USA.” Additionally, she was to receive seventy percent of the proceeds of the sale of the family home.

Mr. Davies argues that he is entitled to terminate spousal support as Ms. Davies now has sufficient means to support herself. He states that the two conditions contained in the support clause, i.e., the end of his obligation to pay child support and Ms. Davies receiving her share of his retirement accounts, are not meant to be a non-modification provision. He argues that he only needs to demonstrate a change of circumstances to modify and/or terminate spousal support.

Accepting Mr. Davies’ argument concerning the intent of the parties would require this Court to look outside the record. A court of appeal’s review is limited to the evidence presented in the record. *See* La. Code. Civ. Proc. art. 2164. However, we are likewise obligated to review the record in its entirety. In doing so, particularly the two judgments signed on January 28, 2015, we cannot say that the trial court erred in its interpretation of the support clause.⁴

A plain reading of the two judgments that were both approved as to form and content and signed by Mr. Davies and his attorney, belies Mr. Davies’ argument. The consent judgment contains two conditions that must be satisfied

⁴ The record before us was designated and does not contain a transcript of a hearing relative to the January 28, 2015 judgments, if indeed one took place.

before Mr. Davies can seek modification or termination of spousal support. It is undisputed that Mr. Davies is still obligated to pay child support for the youngest daughter of the marriage. Therefore, it is of no moment that Ms. Davies has accessed her share of his retirement accounts, which Ms. Davies specifically refutes, as the consent judgment indicates both conditions must be met before Mr. Davies can seek to terminate spousal support.

We cannot say that the trial court erred in its interpretation of the support clause.

In her answer to the appeal, Ms. Davies argues that the trial court erred in granting a new trial. The record indicates that the trial court moved *sua sponte* for a new trial, and granted it with the consent of the parties.

Ms. Davies further argues that the trial court erred in granting Mr. Davies' Motion to Terminate Payment of Health Insurance Premiums.

The provision in the consent judgment addressing insurance coverage is set forth in a paragraph separate from the paragraph addressing child and spousal support. The portion of the paragraph relative to Ms. Davies reads as follows:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that **MARTIN J. DAVIES** ... shall pay the COBRA insurance for **JANET LABATUT DAVIES** as long as it is available through Tulane. When COBRA is not available, **MARTIN J. DAVIES** shall pay the cost of the best available comparable private plan chosen by **MARTIN J. DAVIES**, to include any plans available through the Affordable Care Act. There shall be no decrease in the level of benefits from what is being provided now if that is reasonable, available and the cost is similar.

The trial court found that the above provision did not indicate that the payment of health insurance premiums could not be modified or that it was not subject to judicial review.

Ms. Davies argues that this provision is a contractual obligation entered into bilaterally by the parties, and cannot be unilaterally modified on an alleged change of circumstances. Mr. Davies argues that he only agreed to pay health insurance premiums until such time as his ex-wife could afford to pay her own premiums. He argues that his payment of health insurance premiums is spousal support, and not a separate obligation. Therefore, as there is no language preventing him from seeking termination of these payments, the trial court correctly granted his motion.

The right to modify a spousal support award agreed to by consent of the parties depends on the specific terms of the consent judgment. *Williams v. Poore*, 10-1087, p. 9 (La.App. 4 Cir. 1/12/11), 55 So.3d 953, 958, *citing Aufrichtig v. Aufrichtig*, 34,909 (La.App. 2 Cir. 8/22/01), 796 So.2d 57 (other citations omitted).

Here, the trial court determined that the health insurance premium payments were separate and apart from the spousal support obligation, and, unlike the spousal support obligation, the payments were not subject to a non-modification clause. The trial court considered the document as a whole and noted that the section on child and spousal support contained language that limited the right to seek modification of the award; however, the section concerning payment of health insurance premiums contained no such limitations. In considering the trial court's reasoning, we cannot say that it abused its discretion in granting Mr. Davies' motion.

Ms. Davies also argues on appeal that the trial court erred in declaring her Exception of *Res Judicata* moot. She argues that in the earlier filed motion to modify spousal support, Mr. Davies alleged that she had received income from the sale of the family home, and that her expenses had decreased due to the smaller size of the home she purchased. Her Exception of No Cause of Action filed in

response to Mr. Davies' motion was granted, based on a finding that the sale of the family home was a condition to trigger the paying of spousal support. Thus, Mr. Davies could not use the sale of the house as a "change of circumstances" to modify the support.

In the motion to terminate spousal support, Mr. Davies again alleged that Ms. Davies received seventy percent of the sale price of the family home, purchased a smaller home and has lower expenses. Additionally, Mr. Davies alleged that his ex-wife received her share of his Australian retirement account and is receiving interest payments from his Tulane retirement account.

The doctrine of *res judicata* bars the re-litigation of all causes of action arising out of the same transaction and occurrence that were the subject matter of prior litigation between the same parties. *Oliver v. Orleans Parish Sch. Bd.*, 14-0329, p. 21 (La. 10/31/14), 156 So.3d 596, 611. The doctrine of *res judicata* is codified in La. R.S. 13:4231, which provides in pertinent part:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

...

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

An exception to the doctrine of *res judicata* related to divorce actions is found in La. R.S. 13:4232B which provides:

In an action for divorce under Civil Code Article 102 or 103, in an action for determination of incidental matters under Civil Code Article 105, in an action for contributions to a spouse's education or training under Civil Code Article 121, and in an action for partition of community property and settlement of claims between spouses under R.S. 9:2801, the judgment has the effect of

res judicata only as to causes of action actually adjudicated.

The record indicates that although Mr. Davies raised additional reasons to terminate spousal support, he again raised the issue of the sale of the family home and Ms. Davies' decreased expenses – issues already adjudicated. Although a subsequent action for modification of spousal support standing alone is not precluded under the doctrine of *res judicata*, see *Guillory v. Guillory*, 09-988, p. 5 (La.App. 3 Cir. 2/3/10), 29 So.3d 1288, 1292, we find that Mr. Davies is precluded from raising as grounds for modification or termination, the sale of the family home and Ms. Davies' reduced expenses. *Also see, Vincent v. Vincent*, 11-1822, p. 10 (La.App. 4 Cir. 5/30/12), 95 So.3d 1152, 1159-60.

Accordingly, we find that the trial court erred in finding Ms. Davies' Exception of *Res Judicata* moot as to the grounds raised in Paragraph II A & B of Mr. Davies' Motion to Terminate Spousal Support, relative to the sale of the family home, the proceeds received by Ms. Davies, and her resulting reduced living expenses. We therefore grant the exception and amend the judgment accordingly.

For the reasons stated above, we affirm the judgment of the trial court, as amended.

AFFIRMED, AS AMENDED