STATE OF MICHIGAN

COURT OF APPEALS

VICTOR T. YARASH,

Plaintiff-Appellant,

v

MARJORIE A. YARASH,

Defendant-Appellee.

UNPUBLISHED
October 21, 1997

No. 198730
Macomb Circuit Court
LC No. 85-003089-DM

ON REMAND

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals an order denying his postjudgment motion to modify alimony. We previously denied plaintiff's delayed application for leave to appeal for lack of merit in the grounds presented. However, on further appeal, the Supreme Court remanded to this Court for consideration of the appeal as on leave granted. We affirm.

Plaintiff argues that the trial court erred when it refused to terminate or modify the alimony paid by plaintiff to defendant. We disagree.

This Court reviews the trial court's findings of fact concerning whether there was a change of circumstances justifying modification of alimony under the clearly erroneous standard. *Ackerman v Ackerman*, 197 Mich App 300, 301-302; 495 NW2d 173 (1992). A finding of fact is clearly erroneous if, after reviewing all the evidence, this Court is firmly convinced that an error has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

Modification of alimony is authorized by MCL 552.28; MSA 25.106 and is warranted when there are changed circumstances. *Ackerman, supra* at 301. The party requesting modification has the burden of proving a change in circumstances. *Id.*

Plaintiff first contends that the trial court clearly erred when it determined that neither party had timely adopted the friend of the court's recommendation that alimony be reduced from $100 per week to $30 per week. We disagree. Plaintiff objected to the friend of the court's recommendation because it did not recommend termination of alimony. Plaintiff did not request adoption of the recommendation

as an alternative to enforcing the original alimony provision. Further, defendant requested the recommendation be adopted only as an alternative to termination. Therefore, we are not firmly convinced that the trial court erred in finding that neither party had requested adoption of the recommendation.

Second, plaintiff contends that even if neither party asked that the recommendation be adopted, the trial court's decision to enforce the original provision is inequitable because there has been a change in circumstances. Plaintiff argues that his retirement and resulting loss of income merit a modification of alimony especially when considered in light of defendant's level of income and the fact that she could take her social security benefits early. We disagree.

Retirement may be a change in circumstances warranting a modification. *McCallister v McCallister*, 205 Mich App 84, 86; 517 NW2d 268 (1994). Whether retirement is a change in circumstances may depend on whether the parties contemplated retirement in their agreement. See *Weaver v Weaver*, 172 Mich App 257, 262-263; 431 NW2d 476 (1988). Even where a party demonstrates that retirement is a change in circumstances, the party must also show that the resources available for living expenses have also changed. *Stoltman v Stoltman*, 170 Mich App 653, 659; 429 NW2d 220 (1988). A greatly diminished income may be a sufficient reason to modify alimony. *Pohl v Pohl*, 13 Mich App 662, 665; 164 NW2d 768 (1968).

In this case, there is evidence to suggest that the parties contemplated retirement. The original alimony provision mandates that plaintiff's obligation to defendant shall be reduced when defendant receives both pension benefits and her social security benefits. Further, the difference between plaintiff's weekly net income before retirement and after retirement is approximately $20. Given these facts, we conclude that the trial court did not clearly err when it refused to modify alimony on these grounds.

Additionally, the trial court did not err when it refused to modify plaintiff's alimony obligation on the grounds that defendant earns more than plaintiff and taking her social security benefits early would provide approximately $7,000 more income per year. This Court has held that a recipient's efforts to earn income do not release the payer from alimony obligation. *Aussie v Aussie*, 182 Mich App 454, 462; 452 NW2d 859 (1990). Without considering alimony, plaintiff, after retirement, still earns approximately $80 more per week than defendant. Defendant should not be compelled to take her social security benefits early at a reduced rate so that plaintiff no longer has to pay alimony.

We hold that the findings of fact upon which the trial court based its refusal to modify alimony were not clearly erroneous, and its decision to enforce the original alimony provisions in the judgment of divorce was not inequitable.

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra