

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARYGRACE CARNEY,

Plaintiff-Appellee-  
Cross-Appellant,

v

DOUGLAS F. CARNEY,

Defendant-Appellant-  
Cross-Appellee.

UNPUBLISHED  
September 8, 1998

Nos. 190857 & 190858  
Oakland Circuit Court  
LC No. 90-395564 DM

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Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals and plaintiff cross appeals the circuit court order modifying alimony in this divorce action. We affirm in all respects. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced pursuant to a consent judgment of divorce entered February 22, 1991. The judgment contained a provision for alimony to be paid at a rate of \$1,000 per week for five years. The parties anticipated that their financial situation would be changing, and the judgment contained a provision indicating the earning capacities the judgment was based on, in the event of a petition for modification.

Defendant filed a petition for reduction of alimony on August 20, 1991. Defendant also filed for personal bankruptcy, and sought a discharge of his obligations in bankruptcy court. The circuit court did not rule on defendant's petition, and it ultimately found that defendant had withdrawn the petition. Federal courts found that the alimony obligation was not dischargeable in bankruptcy, and defendant filed a second petition for modification of alimony in circuit court on March 23, 1994. The trial court found that the alimony award was subject to modification, based on the expressed intent in the judgment of divorce. Where defendant's income was much less than anticipated by the judgment and plaintiff's income was much greater, the court terminated the alimony obligation effective March 23, 1994. On

rehearing, the court found that defendant had failed to present sufficient evidence of a change of circumstances in the initial petition, and it declined to make the order retroactive to the first filing date.

Defendant argues that the circuit court erred in failing to make the modification retroactive to the filing date of the initial petition. We disagree. In a divorce action the factual findings of a circuit court will be upheld unless they are clearly erroneous. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). Dispositional rulings will be affirmed unless the appellate court is left with the firm conviction that the ruling is not equitable in light of the facts. *Id.* The trial court did not clearly err in finding that defendant failed to present sufficient evidence to establish a change in circumstances as of the time that he filed his initial petition for modification of the award.

On cross-appeal, plaintiff argues that the court erred in finding that the alimony award was subject to modification. The intent of the parties is the overriding concern in determining whether an alimony award is subject to modification. *Pinka v Pinka*, 206 Mich App 101, 104; 520 NW2d 371 (1994); *Bonfiglio v Pring*, 202 Mich App 61; 507 NW2d 759 (1993). The trial court properly relied on a provision in the judgment of divorce that anticipated modification to determine the parties' intent. Defendant met his burden of proving a change of circumstances, and there is no showing that the modification was inequitable where defendant's actions did not transgress equitable standards of conduct. *Royce v Duthler*, 209 Mich app 682; 531 NW2d 817 (1995)..

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh