

STATE OF MICHIGAN
COURT OF APPEALS

JOHN MAURICE NEWTON,
Plaintiff-Appellee,

UNPUBLISHED
August 23, 2011

v

LAURA ANNE NEWTON,
Defendant-Appellant.

No. 293122
Oakland Circuit Court
LC No. 2008-745955-DO

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm.

After plaintiff filed a complaint for divorce in April 2008, the trial court entered a status quo order requiring him to pay defendant support payments of \$2,100 biweekly. Defendant's counsel later withdrew and defendant began representing herself. Before the scheduled trial date, defendant moved for an adjournment to allow her more time to conduct discovery. She did not identify the need to find new counsel as a reason for requesting the adjournment. The trial court agreed to adjourn trial for one month. On the date scheduled for trial, defendant asserted that she had found a new attorney, but he was on vacation, so she moved for another adjournment. After confirming that no appearance had been filed and that defendant had not paid any retainer fee or signed a retention agreement, the trial court denied defendant's motion. Defendant represented herself on the first day of trial, December 19, 2008, and again on the second date on January 29, 2009.

The trial court issued a written opinion dated April 7, 2009, pursuant to which it awarded defendant spousal support of \$2,500 a month for two years. On April 29, 2009, plaintiff submitted a proposed judgment that provided for spousal support of \$2,500 a month, effective April 7, 2009. The trial court signed that judgment on May 6, 2009, after neither defendant nor her newly retained counsel appeared at a hearing on that date to contest entry of the judgment. On May 27, 2009, defendant moved for a new trial or relief from the judgment. The trial court denied her motion for a new trial, but agreed to modify the previously entered judgment because defendant had been informed that the May 6 hearing had been adjourned. The court later entered a new judgment specifying that the award of \$2,500 in monthly spousal support was effective April 29, 2009, rather than April 7, 2009.

Defendant first argues that the trial court erred in denying her motion for a new trial. We review a trial court's decision denying a motion for a new trial for an abuse of discretion. *Campbell v Dep't of Human Services*, 286 Mich App 230, 243; 780 NW2d 586 (2009).

MCR 2.611(A)(1)(f) provides that if substantial rights are materially affected, a new trial may be granted based on, among other things, "[m]aterial evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial." A new trial may also be granted for "[a] ground listed in MCR 2.612 warranting a new trial." MCR 2.611(A)(1)(h). MCR 2.612(C)(1)(f) allows for relief from a judgment for "[a]ny other reason justifying relief from the operation of the judgment."

Defendant argues that she was entitled to a new trial because of newly discovered evidence that plaintiff was living in an apartment, which was contrary to his testimony at trial that he was living at his work office and in his car. A person seeking a new trial on the basis of newly discovered evidence must satisfy four requirements:

(1) the evidence, not simply its materiality, must be newly discovered, (2) the evidence must not be merely cumulative, (3) the newly discovered evidence must be such that it is likely to change the result, and (4) the party moving for relief from judgment must be found to have not been able to produce the evidence with reasonable diligence. [*South Macomb Disposal Auth v American Ins Co*, 243 Mich App 647, 655; 625 NW2d 40 (2000).]

Here, defendant merely asserted that an unidentified person alerted her to an unidentified website that allegedly provided information regarding plaintiff's current residence. However, defendant failed to identify the person who allegedly alerted her to the website, failed to identify the website, and failed to specify what information the website contained. Without this information, it is not possible to sufficiently determine the substance of the evidence to establish its materiality. Moreover, because this information was not provided, the trial court could have reasonably found that defendant failed to satisfy her burden of showing that the information was truly newly discovered and could not have been produced with reasonable diligence, especially in view of defendant's computer knowledge related to her having installed spyware on plaintiff's home and work computers to monitor his alleged use of inappropriate websites. The trial court did not abuse its discretion in denying defendant's motion for a new trial on this ground.

Defendant also argues that she was entitled to a new trial because she was prejudiced by the trial court's denial of her request for an adjournment on the day of trial to enable her to find new counsel. We disagree. The trial court had granted defendant an adjournment more than a month earlier. At that time, defendant was unrepresented by counsel, but she did not identify the need to find new counsel as a reason for requesting an adjournment. Thus, defendant already had more than a month to retain new counsel, and she had not previously requested more time for that purpose. Further, although defendant claimed on the day of trial that she had recently retained new counsel, no appearance had been filed and defendant admitted that she had not paid a retainer fee or signed any retainer agreement. We also note that the second trial date was more than a month after the trial began, and defendant had not secured new counsel by that date. Moreover, the record does not support defendant's contention that she was unable to represent herself at trial because she was impaired by pain and under the influence of pain medication.

Considering all these circumstances, the trial court did not abuse its discretion in denying defendant's motion for a new trial on this ground.

Defendant next argues that the trial court erred in setting April 29, 2009, as the effective date on which the spousal support was to begin. Defendant contends that the spousal support award should not have been effective until June 24, 2009, the date the final judgment was entered, thereby leaving the status quo order in place until that date.

A trial court in a divorce action may issue temporary orders "with regard to any matter within its jurisdiction" MCR 3.201(A)(1) and MCR 3.207(A). The purpose of the status quo order was to provide for temporary spousal support until the issue of spousal support was resolved.

MCR 3.207(C) governs temporary orders in a domestic relations case and provides, in pertinent part:

(3) A temporary order may be modified at any time during the pendency of the case, following a hearing and upon a showing of good cause.

(4) A temporary order must state its effective date and whether its provisions may be modified retroactively by a subsequent order.

(5) A temporary order remains in effect until modified or until the entry of the final judgment or order.

The order itself provides that it "shall continue in full force and effect until further Order of the court, until it is dissolved, until the case is dismissed, or until the entry of a Judgment in this matter."

Thus, both MCR 3.207(C)(5) and the status quo order itself gave the trial court broad discretion with respect to modifying or terminating the order. The trial court decided the issue of spousal support in a written opinion that was signed on April 7, 2009. On April 29, 2009, plaintiff submitted a proposed judgment that largely comported with the trial court's written opinion, but entry of a final judgment was delayed until June 24, 2009, because of various motions filed by the parties. Under these circumstances, the trial court's selection of April 29, 2009, as the effective date of the spousal support award was not an abuse of discretion. The purpose of the status quo order was to provide for temporary spousal support until the trial court resolved the issue of support at a trial, which the court had done by the April 29, 2009, date. Neither the status quo order nor any court rule required the status quo order to remain in effect until entry of the judgment was finalized.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro