STATE OF MICHIGAN

COURT OF APPEALS

ARDIS F. LAWSON, Plaintiff-Appellant,	UNPUBLISHED January 29, 2013
v	No. 307393 Oakland Circuit Court
CRAIG D. LAWSON, Defendant-Appellee.	LC No. 1998-607537-DO

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Ardis F. Lawson appeals by leave granted from a circuit court order granting Craig D. Lawson's motion to modify a life insurance provision in a judgment of divorce. We reverse and remand.

Ardis and Craig were divorced in 1999. The consent judgment of divorce required Craig to pay Ardis $300 a week in alimony until Ardis's death or remarriage. The alimony was deemed to be modifiable for a change in circumstances. The judgment also required Craig to maintain a life insurance policy of at least $100,000, with Ardis as the beneficiary to secure his alimony obligation and to provide Ardis with proof of continued coverage each year. In 2011, Ardis moved to enforce the life insurance provision, claiming that Craig was without insurance. In response, Craig sought relief from the life insurance obligation based on a change in circumstances. The trial granted both motions and required Craig to obtain a new life insurance policy, but also ruled that the life insurance obligation would terminate after five years. Ardis moved for reconsideration, in part because the trial court had failed to rule on her request for attorney fees. The trial court denied Ardis's request for attorney fees due to Craig's change in circumstances.

We note on appeal that Craig appears to have abandoned his theory that the life insurance provision was modifiable and instead contends that the provision should be read as requiring him to provide security for only the first $100,000 in alimony. He asserts that because Ardis has received more than $100,000 in alimony, his security obligation has been fulfilled and he is no longer required to maintain life insurance. Alternatively, he argues that his performance should

be excused under the doctrine of impossibility. These issues are not properly before this Court. Consistent with MCR 7.205(D)(4), the order granting leave to appeal was "limited to the issues raised in the application and supporting brief."[1] The issue raised in Ardis's application concerned whether the life insurance provision in the divorce judgment was modifiable, not whether it was effective for a limited time or whether Craig's performance should be excused. "An appellee is limited to the issues raised by the appellant unless [he] cross-appeals[.]"[2] "Although an appellee need not file a cross-appeal to argue an alternative basis for affirming the trial court's decision,"[3] the appellee must file a cross-appeal to obtain a decision more favorable than that rendered by the trial court.[4] Because Craig has raised these issues to obtain a determination "that the life insurance security obligation is no longer required" but has not filed a cross-appeal, Craig's issues are not properly before this Court and we decline to consider them.

The trial court's decision on a motion for relief from a judgment is reviewed for an abuse of discretion,[5] which "occurs when the decision results in an outcome falling outside the principled range of outcomes."[6] The trial court's decision on a motion to modify alimony is reviewed de novo on appeal,[7] but the court's findings of fact relating to that decision are reviewed for clear error.[8]

The life insurance provision is part of a consent judgment of divorce. "A consent judgment is the product of an agreement between the parties."[9] Generally, a party may obtain relief from a settlement agreement for mutual mistake, fraud, unconscionable advantage, or ignorance of a material term of the settlement agreement.[10] Other grounds for relief include unilateral mistake induced by fraud;[11] innocent misrepresentation;[12] lack of capacity to

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[1] *Lawson v Lawson*, unpublished order of the Court of Appeals, entered July 27, 2012 (Docket No. 307393).

[2] *In re Complaint of McLeodUSA Telecommunications Servs, Inc*, 277 Mich App 602, 621 n 8; 751 NW2d 508 (2008).

[3] *Truel v City of Dearborn*, 291 Mich App 125, 137; 804 NW2d 744 (2010).

[4] *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998).

[5] *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010).

[6] *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

[7] *Rapaport v Rapaport*, 158 Mich App 741, 746; 405 NW2d 165 (1987), mod 429 Mich 876 (1987).

[8] *Thornton v Thornton*, 277 Mich App 453, 458; 746 NW2d 627 (2008).

[9] *Sylvania Silica Co v Berlin Twp*, 186 Mich App 73, 75; 463 NW2d 129 (1990).

[10] *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998); *Howard v Howard*, 134 Mich App 391, 394, 399-400; 352 NW2d 280 (1984).

[11] *Windham v Morris*, 370 Mich 188, 193; 121 NW2d 479 (1963).

[12] *Alibri v Detroit Wayne Co Stadium Auth*, 470 Mich 895; 683 NW2d 147 (2004).

contract;[13] and duress or coercion.[14] Relief is also available under MCR 2.612(C)(1).[15] Craig did not seek relief under the relevant court rule,[16] and did not allege any of the above grounds for relief from the terms of the consent judgment. Instead, he contended that the life insurance provision was modifiable because it secured the alimony obligation and the alimony obligation was itself modifiable.

In general, an award of alimony in a judgment of divorce is subject to modification for a change of circumstances.[17] "The modification of an alimony award must be based on new facts or changed circumstances arising after the judgment of divorce."[18] Alimony, however, is not modifiable absent a showing of fraud if the award constitutes alimony in gross,[19] or if the case is resolved by a settlement agreement and the parties waive the right to seek modification by agreeing that alimony is not modifiable.[20]

In this case, both Craig and the trial court relied on the statement in the alimony provision that "[t]he alimony payments called for herein may be modified based upon a change in circumstances" to conclude that the life insurance provision was modifiable as well. The entire first paragraph of the alimony provision, of which the authorization for modification was a part, had been superseded by a 2006 consent order, which reduced Craig's alimony obligation to $700 a month. The 2006 order provided that "all future spousal support shall not be modifiable" and at the same time provided that "all other terms and conditions in the Judgment of Divorce," which would include the life insurance provision, "shall remain in full force and in effect." Because the trial court erred as a matter of law in modifying a consent judgment of divorce when Craig had not alleged a legally viable ground for relief and the provision allowing for modification of alimony had been deleted, we reverse the trial court's order modifying the life insurance provision of the judgment of divorce.

With respect to Ardis's argument that the trial court erred by failing to award her attorney fees, we review the trial court's ruling on a motion for attorney fees for an abuse of discretion,[21] but review any factual findings underlying the court's ruling for clear error.[22]

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[13] *Star Realty, Inc v Bower*, 17 Mich App 248, 250; 169 NW2d 194 (1969).

[14] *Lafayette Dramatic Productions, Inc v Ferentz*, 305 Mich 193, 216-217; 9 NW2d 57 (1943).

[15] *Trendell v Solomon*, 178 Mich App 365, 369-370; 443 NW2d 509 (1989).

[16] MCR 2.612(C).

[17] MCL 552.28; *Koy v Koy*, 274 Mich App 653, 661; 735 NW2d 665 (2007).

[18] *Ackerman v Ackerman*, 197 Mich App 300, 301; 495 NW2d 173 (1992).

[19] *Bonfiglio v Pring*, 202 Mich App 61, 63; 507 NW2d 759 (1993).

[20] *Staple v Staple*, 241 Mich App 562, 568-569; 616 NW2d 219 (2000).

[21] *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010).

Ardis requested attorney fees under MCR 3.206(C)(2)(b), which permits the trial court to award all or part of a party's attorney fees and expenses in a domestic relations proceeding when "the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply." "The party requesting the attorney fees has the burden of showing facts sufficient to justify the award."[23] The trial court must determine whether the other party's conduct was causally connected to the fees incurred by the requesting party and if the fees requested were reasonable.[24]

The trial court's findings on this issue were inconsistent. On the one hand, it denied Ardis's request for attorney fees because Craig's changed circumstances "prevented him from obtaining an affordable life insurance policy" as required by the judgment of divorce. On the other hand, it found that Craig was able to obtain an affordable life insurance policy because it ordered him to obtain the policy that cost $1,917 a year and maintain the policy for five years. Further, the fact that the court ordered Craig to obtain a new life insurance policy and maintain it for five years implied that Craig had failed to comply with the life insurance provision despite an ability to do so. Because the trial court's findings are inconsistent and because it never actually determined whether Craig had the ability to comply with the judgment of divorce and failed to do so, we remand for reconsideration of Ardis's request for attorney fees.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter

[22] *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 296; 769 NW2d 234 (2009).

[23] *Woodington v Shokoohi*, 288 Mich App 352, 370; 792 NW2d 63 (2010).

[24] *Reed v Reed*, 265 Mich App 131, 165; 693 NW2d 825 (2005).