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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-597

No. COA20-838

Filed 2 November 2021

Mecklenburg County, No. 14 CVD 2288

PAUL DU PLESSIS, Plaintiff,

v.

DEBORAH DU PLESSIS, Defendant.

Appeal by plaintiff from order entered 17 June 2020 by Judge Tracy H. Hewett in Mecklenburg County District Court. Heard in the Court of Appeals 6 October 2021.

*Plumides, Romano & Johnson, P.C., by Richard B. Johnson, for plaintiff-appellant.*

*Wofford Burt, PLLC, by Rebecca B. Wofford, for defendant-appellee.*

ARROWOOD, Judge.

¶ 1

Paul Du Plessis (“plaintiff”) appeals from the trial court’s order regarding modification of alimony and attorney’s fees. Plaintiff contends the trial court abused its discretion by finding that a change of circumstances warranted modifying alimony and by ordering plaintiff to pay attorney’s fees. For the following reasons, we reverse the trial court’s order.

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I. Background

¶ 2 Plaintiff and Deborah Du Plessis (“defendant”) were married on 9 December 1995 and separated on 30 July 2013. On 11 February 2014, plaintiff filed a complaint for child custody, child support, and equitable distribution. On 21 February 2014, defendant filed an answer and counterclaims for child custody, child support, equitable distribution, alimony, and attorney’s fees. Plaintiff filed a reply on 10 March 2014.

¶ 3 The Mecklenburg County District Court conducted a hearing on the parties’ claims from 1-4 June 2015, Judge Alicia D. Brooks presiding. The trial court entered an order on 9 October 2015 ordering plaintiff to pay defendant \$1,800.00 per month in alimony for a period of six years, beginning on 10 June 2015. The trial court found that defendant was unemployed and had no income and found that defendant’s reasonable monthly needs and expenses were \$4,104.93 per month. The trial court found that defendant would be receiving \$1,200.00 per month in child support as of August 2015 and accordingly defendant’s net monthly need was \$2,904.93. The trial court found that plaintiff had income of \$15,061.00 per month, a net monthly need of \$6,569.00, and ability to pay \$3,810.65 per month in alimony. The trial court also ordered plaintiff to pay defendant \$9,000.00 in attorney’s fees.

¶ 4 On 16 October 2015, defendant filed a Rule 59 and Rule 60 Motion alleging the trial court incorrectly determined plaintiff’s alimony obligation. The trial court

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denied defendant's motion by order entered 29 September 2016.

¶ 5 On 8 June 2018, defendant filed a Motion for Modification of Alimony and Attorney's Fees. Defendant alleged that there had been a substantial change in circumstances warranting an increase in alimony obligation, specifically alleging that defendant's reasonable needs and expenses had increased, plaintiff's income had increased, and that plaintiff's monthly child support obligation was set to automatically terminate on 25 August 2018. On 10 July 2018, plaintiff filed a Response to Defendant's Motion to Modify and Plaintiff's Motion to Modify.

¶ 6 The Mecklenburg County District Court heard both parties' motions on 10 December 2019 and 18 December 2019, Judge Hewett presiding. The hearing primarily consisted of testimony by the parties regarding their finances and needs. In plaintiff's closing statement, plaintiff's trial counsel argued that many of the issues presented at the hearing were addressed in the denial of defendant's Rule 59 and Rule 60 Motion and that the only changes since the prior order were the termination of child support and defendant's increased income. Defendant's trial counsel argued that because the prior order made no specific reference to whether the termination of child support was foreseeable, the termination of child support constituted a substantial change of circumstances.

¶ 7 After the conclusion of closing statements, the trial court made the following statement:

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Yes, so I, you know, I never criticize another Judge's order or anything because I'm sure my orders to be criticized on rare occasion also. However, this order is just blank. I can't get anything out of this in terms of why. This is a very low alimony amount, extremely low. It was a pretty low child support, although I see that came from the child support guidelines.

And so that's why I pulled out the statute to, you know, look to see -- there's a blanket statement in the Order that says, "Having due regard for all the facts and circumstances, including husband's ability to pay." Well, I don't think that was considered. I mean, I guess it was. But the amount and duration of alimony which is reasonable, in order for her to meet her reasonable needs. But the amount didn't even come close, really, to her needs as expressed in the Order.

And so, just even -- I mean this was a 17-year marriage, most of which she didn't work. She raised your children. She followed you to different countries, while your career and income went sky high. I don't know what I'm missing that wasn't in this Order, sir. I assume, I mean, the income, at least at this time, was approximately the same.

There's a Finding that says, "Husband obtained a bachelor's degree while in South Africa. With the support of Wife, Husband received his master's degree during the party's marriage. A portion of that cost was covered by his employer and the remainder was paid with marital funds."

So here she is helping you get the golden ring and you want to give her a plastic token. Or even that -- this is so egregious, I can't even really express it.

The trial court later added that it ran "a lot of numbers[,] and that "they're not that much different than what's in the Order. The Order actually has [plaintiff's] monthly net higher than what I was going to find it." In discussing the term of alimony, the

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trial court stated that defendant “was underpaid” under the prior order and considered this in extending the term of alimony.

¶ 8 The trial court entered an order on 17 June 2020 increasing plaintiff’s alimony obligation to \$3,249.00 per month and extending the term of alimony an additional two years and ten months. The trial court also ordered plaintiff to pay \$694.31 per month towards alimony arrears and \$1,800.00 per month towards an attorney’s fees award of \$35,410.00.

¶ 9 In the order, the trial court found that, “[d]espite the Court originally finding that [plaintiff] had an ability to pay alimony in the amount of \$3,810.65 per month, the *Order* . . . awarded alimony to [defendant] in the amount of \$1,800.00 per month.” The trial court also found that the prior order offset and reduced defendant’s individual needs and expenses by the amount of child support she received, although defendant’s child support terminated in August 2018, and that defendant had been unable to increase her income since the prior order. Accordingly, the trial court found that there had been a substantial change in circumstances that warranted modification.

¶ 10 Regarding the income and expenses of the parties, the trial court found that plaintiff had a gross income of \$18,455.00 per month, net expenses of \$6,352.85 per month, and “the present means and ability to pay \$3,862.15 per month above the \$1,800.00 per month that [plaintiff] is presently paying to [defendant] in alimony.”

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The trial court found that defendant had a combined net income of \$1,266.27 per month and net expenses of \$4,515.08 per month, for a monthly deficit of \$3,248.81. The trial court also found that plaintiff was in arrears by \$33,327.00 through the end of May 2020.

¶ 11 Plaintiff filed notice of appeal on 30 June 2020.

II. Discussion

¶ 12 Plaintiff contends the trial court abused its discretion in finding there had been a substantial change of circumstances warranting a modification. Plaintiff also argues that the order was not supported by sufficient evidence, findings of fact, or conclusions of law, that the trial court abused its discretion in determining that plaintiff had the means and ability to pay the monthly amounts of alimony, arrears, and attorney's fees, and that the trial court abused its discretion by extending the term of alimony.

A. Substantial Change of Circumstances

¶ 13 “Decisions regarding the amount of alimony are left to the sound discretion of the trial judge and will not be disturbed on appeal unless there has been a manifest abuse of that discretion.” *Kelly v. Kelly*, 228 N.C. App. 600, 601, 747 S.E.2d 268, 272 (2013) (citation omitted). “When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts.”

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*Williamson v. Williamson*, 217 N.C. App. 388, 390, 719 S.E.2d 625, 626 (2011) (citation and quotation marks omitted). An abuse of discretion has occurred if the decision is “manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.” *Briley v. Farabow*, 348 N.C. 537, 547, 501 S.E.2d 649, 656 (1998) (citations omitted).

¶ 14 An order of alimony “may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.” N.C. Gen. Stat. § 50-16.9(a) (2019). This Court has determined that the term “changed circumstances” means “a *substantial* change in conditions, upon which the moving party bears the burden of proving that the present award is either inadequate or unduly burdensome.” *Dodson v. Dodson*, 190 N.C. App. 412, 415, 660 S.E.2d 93, 96 (2008) (emphasis in original) (quoting *Britt v. Britt*, 49 N.C. App. 463, 470, 271 S.E.2d 921, 926 (1980)). “The present overall circumstances of the parties must be compared with the circumstances existing at the time of the original award in order to determine if there has been a substantial change.” *Britt v. Britt*, 49 N.C. App. 463, 474, 271 S.E.2d 921, 928 (1980) (citation omitted). “A change in income alone says nothing about the total circumstances of a party. The significant inquiry is how that change in income affects a supporting spouse’s ability to pay or a dependent spouse’s need for support.” *Dodson*, 190 N.C. App. at 416, 660 S.E.2d at 96 (citation omitted).

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¶ 15 “The power of the court to modify an alimony order is not power to grant a new trial or to retry the issues of the original hearing, but only to adapt the decree to some distinct and definite change in the financial circumstances of the parties.” *Cunningham v. Cunningham*, 345 N.C. 430, 436, 480 S.E.2d 403, 406 (1997) (citations omitted).

¶ 16 Here, defendant had the burden of proving that a substantial change of financial circumstances had occurred since the original alimony order. Based on the evidence presented at the hearing, the trial court found that plaintiff had a gross income of \$18,455.00 per month, net expenses of \$6,352.85 per month, and the ability to pay \$3,862.15 per month in alimony, while defendant had a combined net income of \$1,266.27 per month and net expenses of \$4,515.08 per month, for a monthly deficit of \$3,248.81. In the prior order, the court found that plaintiff had a gross monthly income of \$15,061.00, net monthly need of \$6,569.00, and the ability to pay \$3,810.65 per month, while defendant had no income and a net monthly need of \$2,904.93.

¶ 17 As the trial court acknowledged at the hearing, the parties’ incomes, expenses, and net monthly needs on the date of the hearing were similar to the parties’ circumstances at the time of the prior order. The trial court found that plaintiff’s monthly ability to pay alimony had increased by only \$51.50 yet ordered that plaintiff’s monthly alimony obligation be increased by \$1,449.00.

¶ 18 It appears the trial court sought to retry the issues of the original hearing due



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to the trial court’s opinion that the original alimony award was “extremely low” and “didn’t even come close” to meeting defendant’s needs. The trial court’s authority was limited to adapting “the decree to some distinct and definite change in the financial circumstances of the parties.” *Cunningham*, 345 N.C. at 436, 480 S.E.2d at 406. The trial court directly acknowledged that the numbers were “not that much different than what’s in the Order[,]” and made findings that the parties’ financial circumstances were largely unchanged, yet asserted its authority to modify alimony because it found the prior order “egregious” and that defendant had been “underpaid.” Based on the evidence presented and the trial court’s own findings, there was not a distinct and definite change in the financial circumstances of the parties sufficient to warrant modification, and the trial court lacked the authority to modify alimony.

¶ 19           Accordingly, we hold the trial court abused its discretion in finding a substantial change of circumstances had occurred.

B.     Plaintiff’s Remaining Arguments

¶ 20           Plaintiff raises additional arguments related to the trial court’s findings of fact and conclusions of law regarding plaintiff’s ability to pay, as well as the extended term of alimony. Because we hold the trial court abused its discretion in finding a substantial change of circumstances occurred, it is unnecessary to address plaintiff’s remaining arguments.

III.    Conclusion

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¶ 21 For the foregoing reasons, we hold the trial court abused its discretion in finding a substantial change of circumstances and in ordering an increase in plaintiff's alimony obligation. The order modifying and extending alimony is reversed.

REVERSED.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).