

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GREGORY A. BRUMBAUGH	:	JUDGES:
	:	Hon. W. Scott Gwin, P. J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	Case No. 2010 CA 00220
JOY L. WILLIAMS fka BRUMBAUGH	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal From Court of Common Pleas,
Domestic Relations Division, Case No.
2008 DR 00121

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 8, 2010

APPEARANCES:

For Plaintiff-Appellant

JEFFREY V. HAWKINS
SLATER & ZURZ
One Cascade Plaza
Suite 2210
Akron, Ohio 44308

For Defendant-Appellee

RAYMOND T. BULES
JILL C. MCQUEEN
DAY KETTERER
200 Market Avenue N., P.O. Box 24213
Canton, Ohio 44701-4213

Wise, J.

{¶1} Appellant Gregory A. Brumbaugh appeals from the July 19, 2010, Judgment Entry in the Stark County Court of Common Pleas, Domestic Relations Division. Appellee is Joy L. Williams fka Brumbaugh.

{¶2} This case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶3} “(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court’s decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form.”

{¶4} This appeal shall be considered in accordance with the aforementioned rule.

STATEMENT OF THE FACTS AND CASE

{¶5} On March 19, 2008, the Stark County Court of Common Pleas, Family Court Division, granted a Decree of Dissolution of Marriage between the parties herein. The Separation Agreement attached to the Decree, and incorporated therein, provided for “spousal support in the amount of \$1,000.00 per month, paid by husband to wife for a period of seventy-eight (78) months.”

{¶6} The Separation Agreement also contained the following language following the heading “Modification”:

{¶7} “The parties may modify this Separation Agreement only in writing signed by both parties and approved by a court of competent jurisdiction.”

{¶18} On April 10, 2010, Appellee Joy L. Williams was remarried.

{¶19} On April 15, 2010, Appellant Gregory Brumbaugh filed a motion to terminate spousal support.

{¶110} On May 18, 2010, a hearing was held in this matter before a magistrate.

{¶111} On June 9, 2010, the magistrate issued her decision wherein she ruled that the Decree of Dissolution did not contain a reservation of jurisdiction and that Appellant was required to continue paying spousal support to Appellee.

{¶112} On June 22, 2010, Appellant filed Objections to the Magistrate's Decision.

{¶113} On July 19, 2010, the trial court issued its Judgment Entry, findings of facts and conclusions of law, affirming the Magistrate's Decision and independently ruling that the Decree of Dissolution did not contain sufficient language to retain the court's jurisdiction.

{¶114} Appellant now raises the following assignments of error for review:

ASSIGNMENTS OF ERROR

{¶115} "I. THE TRIAL COURT ERRED IN OVERRULING THE PETITIONER-APPELLANT'S MOTION TO TERMINATE SPOUSAL SUPPORT."

I.

{¶116} In Appellant's sole assignment of error, Appellant contends that the trial court erred in not granting his motion to terminate spousal support. We disagree.

{¶117} Upon review, we find that neither the Decree of Dissolution nor the Separation Agreement provide for the termination of spousal support upon Appellee's remarriage. We further find that neither the Decree of Dissolution nor the Separation

Agreement contain an express reservation of jurisdiction over spousal support and that the only provision for modification of the Separation Agreement requires that such be made in writing, signed by both parties and approved by the Court.

{¶18} Appellant argues that the trial court did retain jurisdiction over spousal support because the Separation Agreement contains a provision for suspension of spousal support in the event of husband's unemployment:

{¶19} "In the event Husband shall become unemployed, then in that event, Husband may have a suspension of the payment of spousal support while he is unemployed for a period not to exceed six (6) months."

{¶20} We find that such language only acts as a temporary suspension of support but in no way relieves the obligation for such support or provides for modification or termination by the trial court under any set of circumstances. As such, we find that it does not confer jurisdiction on the trial court to modify or terminate the terms of the spousal support as set forth in the Separation Agreement.

{¶21} "Pursuant to R.C. 3105.18(E), a trial court has the authority to modify or terminate an order for alimony or spousal support only if the divorce decree contains an express reservation of jurisdiction." *Kimble v. Kimble*, 97 Ohio St.3d 424, 780 N.E.2d 273, 2002-Ohio-6667.

{¶22} Since the instant appeal is subject to R.C. §3105.18(E), we must adhere to the jurisdictional requirements of that statute. Consequently, we hold that pursuant to R.C. §3105.18(E), a trial court has the authority to modify or terminate an order for alimony or spousal support only if the divorce decree contains an express reservation of jurisdiction.

{¶23} As applied to this case, since the trial court did not reserve jurisdiction over the matter of spousal support, we find that it lacked authority to terminate the award.

{¶24} Appellant's sole assignment of error is overruled.

{¶25} Accordingly, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

JUDGES

