[Cite as *Zlocki v. Zlocki*, 2009-Ohio-5797.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

JOHN ZLOCKI	C.A. No. 24747
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
BONNIE ZLOCKI	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. DR 2008 06 1777

DECISION AND JOURNAL ENTRY

Dated: November 4, 2009

BELFANCE, Judge.

{¶1} Defendant/Appellant Bonnie Zlocki ("Wife") appeals the decision of the Summit County Court of Common Pleas, Domestic Relations Division terminating the spousal support obligation of Plaintiff/Appellee John Zlocki ("Husband"). For reasons set forth below we reverse.

FACTS

{¶2} Husband and Wife were married on January 10, 1998 and had three children during the marriage. The parties filed a petition for dissolution of marriage on June 17, 2008 along with inter alia, a separation agreement, a shared parenting plan, and a child support worksheet. On August 18, 2008, the trial court filed a judgment entry granting the dissolution of marriage which incorporated the separation agreement and found the shared parenting plan to be in the best interests of the children. The separation agreement provided that Husband would pay Wife spousal support of $500 per month until June 1, 2012.

{¶3} On September 2, 2008, Husband filed an "EMERGENCY MOTION FOR CUSTODY, TERMINATION OF SPOUSAL SUPPORT AND CHILD SUPPORT." The motion requested that Husband's obligation to pay spousal and child support be terminated due to Wife's incarceration. That day the trial court issued an ex parte judgment entry ordering that Husband be designated the legal custodian of the children, that Wife's visitation be suspended, and that Husband's child and spousal support obligations be suspended. The trial court also set the matter for a hearing before a magistrate.

{¶4} The magistrate held a hearing in October and issued a provisional order on November 19, 2008 concluding that "the parties' separation agreement provides that the jurisdiction of this Court with regards to spousal support is only reserved if change of circumstances is due to [Husband's] involuntary unemployment. The facts presented at hearing do not indicate that any alleged change in circumstances results from that. As a result, the Court finds that [it] do[es] not have jurisdiction to continue suspension of the spousal support award granted to [Wife] * * *." The magistrate also noted that a second hearing would take place to address Husband's motion for child support.

{¶5} The magistrate held the second hearing in January and filed a decision February 19, 2009 ordering Wife to pay Husband child support which would be offset against the monthly spousal support Husband pays Wife. Wife filed objections to the magistrate's decision finding error with the magistrate's calculation of child support. The trial court issued a decision overruling Wife's objection, sustaining Husband's motion to terminate both child and spousal support, and vacating the magistrate's award of child support to Husband as Husband's motion requested only the termination of his payment of child support to Wife, and not the award of child support to him from Wife.

{¶6} It is from this decision Wife has appealed, raising one assignment of error for our review.

JUSTISDICTION TO TERMINATE SPOUSAL SUPPORT

{¶7} In Wife's sole assignment of error she argues that the trial court erred in terminating Husband's obligation to pay spousal support as the trial court lacked jurisdiction to do so. We agree.

{¶8} In general this Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. "In so doing, we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. We review a trial court's order modifying spousal support for an abuse of discretion. *Johnson v. Johnson*, 9th Dist. No. 24159, 2008-Ohio-4557, at ¶5. However, where our review focuses on the interpretation of a contract, as in this case, our review is de novo, as it presents us with a question of law. *Farrell v. Deuble*, 175 Ohio App.3d 646, 2008-Ohio-1124, at ¶10.

{¶9} R.C. 3105.18(E)(2) provides in pertinent part that :

> "* * * [I]f a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless * * * the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support."

The Supreme Court of Ohio has held that "a motion to terminate alimony or spousal support [also] falls within the purview of R.C. 3105.18(E)." *Kimble v. Kimble*, 97 Ohio St.3d 424, 2002-Ohio-6667, at ¶7. "[P]ursuant 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." Id. at ¶10.

{¶10} Here the separation agreement which was incorporated into the entry granting dissolution provides the following under the heading titled "SPOUSAL SUPPORT":

> "Husband shall pay to Wife spousal support in the amount of $500.00 per month, said obligation terminating June 1, 2012.
>
> "The payment of spousal support shall be considered as income to Wife and as a deduction to Husband for income tax purposes.
>
> "Husband's obligation to pay spousal support to Wife shall terminate upon any of the following events:
>
> "1) The death of either party or
>
> "2) The remarriage of Wife.
>
> "The Court shall retain jurisdiction over spousal support as it relates to the reduction in amount of Husband's obligation. Such retention of jurisdiction is strictly limited to a change of circumstances in regard to Husband's involuntary loss of employment."

In this case, Husband sought to terminate his spousal support obligation because Wife became incarcerated. Under the plain language of the separation agreement, that particular circumstance was not one which would give the trial court continuing jurisdiction to modify or terminate spousal support. A separation agreement incorporated into an order granting the dissolution of a marriage is a contract, subject to the same rules governing other types of contracts. *Turner v. Turner*, 9th Dist. No. 07CA009187, 2008-Ohio-2601, at ¶13. While the separation agreement at issue does specifically provide that the trial court retains jurisdiction over reductions in Husband's support obligation, the very next sentence "strictly" limits the trial court's continuing jurisdiction to only those situations in which the change in circumstances relates to Husband's involuntary unemployment. The parties were free to include general language in their separation

agreement allowing the trial court to maintain continuing jurisdiction to modify or terminate spousal support. However, as they did not, they are bound by the terms of their agreement.

{¶11} The facts of the instant appeal are similar to those of *McLaughlin v. McLaughlin* (Mar. 26, 2001), 4th Dist. No. 00CA14. In that case, the separation agreement provided that the appellant would pay appellee $60,000 a year in spousal support, with such obligation terminating "if appellee dies, remarries, or cohabits with an adult male to whom she is not related." Id. at *3. The agreement further stated that the obligation would be reduced if he suffered an involuntary decrease in income. Id. "However, the agreement neither provide[d] for the termination of spousal support at a definite date in the future, nor d[id] it reserve continuing jurisdiction for the trial court to modify spousal support." Id. Husband thereafter moved to modify spousal support because the parties' youngest child became emancipated and was in college. Id. at *1. In holding that the trial court lacked jurisdiction, the court stated that "Appellant's spousal support obligation was defined in a separation agreement between the parties. The agreement provides for modification of appellant's obligation in certain limited circumstances, and it does not reserve continuing jurisdiction for the trial court to otherwise modify spousal support. Absent such a reservation, R.C. 3105.18(E)(1) deprives the trial court of jurisdiction to hear appellant's motion to modify spousal support." Id. at *4.

{¶12} As the separation agreement sub judice only provided for limited circumstances allowing the trial court to retain jurisdiction, and Husband did not allege the existence of any of those circumstances, the trial court erred in terminating Husband's spousal support obligation as it did not have jurisdiction to do so. Thus, we determine Wife's assignment of error has merit.

CONCLUSION

{¶13} In light of the foregoing, we sustain Wife's assignment of error and reverse the judgment of the Summit County Court of Common Pleas, Domestic Relations Division.

Judgment reversed
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
CONCURS

CARR, P. J.
CONCURS, SAYING:

{¶14} Although I concur with the majority's opinion, I write separately to clarify that the issue of the offset of child support or the award of child support to father is not before us and we take no position on that issue.

APPEARANCES:

NANCY MERCURIO MORRISON, Attorney at Law, for Appellant.

LISA HAHN, Attorney at Law, for Appellee.