

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lori Ford,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-1123
	:	(C.P.C. No. 98DR 09 3604)
Thomas Ford,	:	
	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 20, 2010

Logan Philipps, for appellee.

Reash Law Offices, and *Maryellen Corna Reash*, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

TYACK, P.J.

{¶1} Thomas Ford is appealing from the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, which raised his spousal support from \$500 per month to \$1,000 per month from August 9, 2006 to March 1, 2008. The court terminated spousal support as of the March 1 date.

{¶2} Thomas Ford assigns a single assignment of error for our consideration:

The Trial Court Erred in Finding that a Substantial Change of Circumstances Existed, Sufficient to Invoke the Jurisdiction of the Court to Consider Modification of Lori Ford's Spousal Support Award.

{¶3} The parties were divorced in July 2000. The divorce decree awarded spousal support of \$100 per month and provided that the trial court retained jurisdiction to modify the spousal support due to Lori Ford's uncertain medical future.

{¶4} Almost four years later, Lori Ford filed a motion requesting that her spousal support be increased due to a deterioration of her medical condition and a corresponding decrease in her income. The trial court granted an increase in spousal support from \$100 per month to \$500 per month. Thomas Ford's income had increased by over \$20,000 per year. Lori Ford's income had also increased, but so had her uncovered medical expenses.

{¶5} On August 9, 2006, Lori Ford filed a second motion seeking a modification of her spousal support. The trial court granted the modification as indicated above. That modification is what is contested in this appeal.

{¶6} At the time of the initial modification of spousal support, Lori Ford's income was found to be \$35,539 from her employment as a registered nurse. Thomas Ford's income was found to be \$95,800. Lori Ford's work hours were limited to 20 hours per week due to her medical condition. Thomas Ford was contributing \$300 per pay to his deferred compensation account. He had accumulated \$22,000 in savings and \$14,000 in an IRA since the divorce. At that time, he was paying \$775.68 per month in child support.

{¶7} The parties each presented the court with a budget at that time. Lori Ford claimed monthly expenses of \$4,819.63. Thomas Ford claimed monthly expenses of

\$3,263. Lori Ford was found to be spending over \$500 per month for health insurance and uncovered medical expenses at that time.

{¶8} At the time of the second motion for modification of spousal support, the trial court found a substantial change of circumstances not contemplated at the time of the prior order modifying spousal support. In doing so, the trial court looked at the totality of the circumstances and cited to R.C. 3105.18(F) which provides for "a change in circumstances including, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses."

{¶9} The trial court noticed that Lori Ford ceased working altogether in 2006, after an increase in her income from 2005 to 2006. She had a spinal fusion and suffered from additional problems related to her diabetes and hyperthyroidism unawareness. The trial court found that Lori Ford was no longer able "to make a few thousand dollars per year selling artwork" or to supplement her income in any other way. The trial court found Lori's health was continuing to deteriorate.

{¶10} The trial court noted also that Thomas Ford was over \$16,000 in arrears on paying his spousal support. At the same time, Thomas Ford had over \$130,000 in his deferred compensation account, down from over \$198,000 at the beginning of 2008 due to market losses. He also had over \$25,000 in an account at UBS as of March 2008.

{¶11} Thomas Ford's ability to pay the spousal support ordered by the court is not in serious question. Further, his income had increased from \$95,810 to \$101,943.42 in 2008. An additional increase to \$103,850 was contemplated for 2009 when the court journalized the second modification.

{¶12} The trial court carefully analyzed the factors pertinent to this case in a 16 page opinion. The portion of the opinion related to a change of circumstance mentions specifically Lori Ford's transition from part-time work as a nurse at The Ohio State University Hospitals to a medical condition which made her unable to work as a nurse, as an artist, or in any other capacity. That portion of the opinion also specifically mentions Thomas Ford's development of an arrearage of over \$16,000 and Lori Ford's continuing deterioration in her health.

{¶13} The opinion elsewhere notes that Thomas Ford's income had increased by over \$8,000 per year. Further, his failure to keep his spousal support current, despite his consistent payments into a deferred compensation account meant that Lori Ford was not receiving the full present value of the funds ordered to be paid as spousal support.

{¶14} Competent, credible evidence supported the trial court's factual findings as to a substantial change of circumstances. The trial court was within its discretion to order the temporary increase in spousal support.

{¶15} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

SADLER and FRENCH, JJ., concur.
