

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLERMONT COUNTY

CAROLYN JEAN MORGAN,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-08-050
- vs -	:	<u>OPINION</u>
	:	3/22/2010
DONALD L. MORGAN,	:	
Defendant-Appellee.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. 2004DRB1741

Mark J. Tekulve, 785 Ohio Pike, Cincinnati, Ohio 45245, for plaintiff-appellant

Christian B. Stegeman, 9200 Montgomery Road, Building 7B, Cincinnati, Ohio 45242,  
for defendant-appellee

**POWELL, J.**

{¶1} Plaintiff-appellant, Carolyn Morgan, appeals the decision of the Clermont County Court of Common Pleas, Division of Domestic Relations, terminating spousal support. We affirm the decision of the trial court.

{¶2} Carolyn and Donald Morgan had been married 41 years when they divorced in October 2006, at which time all children born issue of the marriage were emancipated. As part of the divorce, the trial court ordered Donald to pay Carolyn \$550

spousal support per month, and reserved jurisdiction to modify its order should the circumstances change.

{¶3} In April 2009, Donald moved the court to terminate his spousal support obligation, arguing that his circumstances had changed because he was no longer employed, and instead received disability benefits as well as a small pension. After a hearing, the magistrate agreed with Donald that his circumstances had changed, and further terminated the spousal support order. Although Carolyn objected to the magistrate's ruling, the trial court overruled the objections and adopted the magistrate's ruling in full. Carolyn now appeals the trial court's decision, raising the following assignment of error:

{¶4} "THE TRIAL COURT'S DECISION TERMINATING SPOUSAL SUPPORT CONSTITUTED AN ABUSE OF DISCRETION MANDATING REVERSAL AND REINSTATEMENT OF APPELLANT'S SPOUSAL SUPPORT AWARD."

{¶5} In her assignment of error, Carolyn asserts that the trial court abused its discretion in terminating her spousal support. This argument lacks merit.

{¶6} When presented with a spousal support modification, a reviewing court will apply an abuse of discretion standard so that the trial court's decision will not be reversed unless it is unreasonable, arbitrary, or unconscionable. *Kelhoffer v. Kelhoffer*, Butler App. No. CA2001-02-031, 2001-Ohio-8659. Upon review, an appellate court may not substitute its judgment for that of the trial court. *In re Jane Doe 1* (1990), 57 Ohio St.3d 135.

{¶7} After finding that a change in circumstances warranted reconsideration of the spousal support order<sup>1</sup>, the trial court considered the factors found in R.C.

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1. Carolyn does not contest the trial court's finding of change in circumstances, and instead focuses her appeal on whether the trial court abused its discretion in terminating the support.

3105.18(C)(1) and found in the process that spousal support was no longer warranted. The trial court noted that the incomes of both parties were similar in that Donald received \$30,036 per year from his pensions and disability, while Carolyn earned \$30,764 from the four jobs she works.

{¶18} The trial court heard evidence that Carolyn is able to meet her monthly expenses through her earnings, while Donald's income does not cover his expenses. Regarding their earning abilities, the trial court found that while Carolyn is able to continue her work, Donald has been permanently disabled due to a back problem and a hearing disability. Because of his lack of future earning ability, the trial court found that Donald is no longer able to pay spousal support.

{¶19} Additionally, the trial court determined that Carolyn no longer has need for spousal support. At the time of the original order, Carolyn earned approximately \$20,448. At the time of the hearing, however, her income had increased to \$30,764. Carolyn now asserts that the trial court erred in terminating her spousal support based on the increase in her income. However, the trial court properly considered Carolyn's income increase when terminating her spousal support. See *Norbut v. Norbut*, Green App. No. 06-CA-112, 2007-Ohio-2966 (noting that a recipient's need for spousal support is a proper factor to consider when determining whether a support order is appropriate and reasonable). Additionally, the trial court did not base its decision solely on the increased income and instead, considered the other factors as discussed above.

{¶10} After reviewing the record, we are unable to say that the trial court's decision to terminate spousal support was arbitrary, unreasonable, or capricious. Having found no abuse of discretion, Carolyn's single assignment of error is overruled.

{¶11} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.