

Court of Appeals, State of Michigan

ORDER

Gary Louis Geist v Sonia Renee Geist

Docket No. 355917

LC No. 2017-002208-DO

James Robert Redford
Presiding Judge

David H. Sawyer

Douglas B. Shapiro
Judges

Pursuant to MCR 7.205(E)(2), the September 17, 2020 order denying plaintiff's motion to modify or terminate spousal support is VACATED and the case is REMANDED to the Berrien Circuit Court for additional proceedings. There are two types of alimony: periodic alimony and alimony in gross. See *Friend v Friend*, 486 Mich 1035, 1035; 783 NW2d 122 (2010). Periodic alimony is subject to modification under MCL 552.28, while alimony in gross is considered nonmodifiable and is exempt from modification under MCL 552.28. *Id.*; *Staple v Staple*, 241 Mich App 562, 578 n 14; 616 NW2d 219 (2000). The spousal support award has characteristics of periodic alimony and alimony in gross. See *Friend*, 486 Mich at 1035; *Staple*, 241 Mich App at 566. On remand, the circuit court shall determine whether the parties intended for the spousal support award to be periodic alimony or alimony in gross. If it determines that the spousal support award is alimony in gross, the circuit court shall deny the motion to modify or terminate spousal support. If it decides that the spousal support award is periodic alimony, the circuit court shall then determine whether plaintiff's reduction in income constitutes a change in circumstances and, if so, whether it warrants a modification in spousal support. *Smith v Smith*, 328 Mich App 279, 286, 288; 936 NW2d 716 (2019). To the extent that the spousal support award is periodic alimony, the parties did not waive their statutory right to seek modification of it. There is no provision in either the consent judgment of divorce or the uniform spousal support order, which is incorporated into the judgment of divorce, where the parties clearly and unambiguously agreed that they forwent their statutory right to petition the court for modification of plaintiff's spousal support obligation and that the obligation was final, binding, and nonmodifiable. *Staple*, 241 Mich App at 581.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 12, 2021

Date


Chief Clerk