

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDWARD MILLER,

Plaintiff-Appellant,

V

JACKLINE MILLER,

Defendant-Appellee.

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UNPUBLISHED

June 12, 2003

No. 237947

Oakland Circuit Court

LC No. 80-211023-DO

Before: Gage, P.J., and Wilder and Fort Hood.

PER CURIAM.

In this post-judgment divorce matter, plaintiff appeals by leave granted the trial court's order denying his petition to terminate spousal support. We affirm.

Plaintiff and defendant divorced in 1981. The judgment of divorce required plaintiff to pay \$1,500 a month in alimony for the support and maintenance of defendant, to continue until further order of the trial court, and terminating in the event of defendant's death or remarriage. The judgment of divorce also provided:

IT IS FURTHER ORDERED AND ADJUDGED that in view of the fact that it is anticipated that the Wife shall become employed in the future, that any earnings of hers, up to the amount of seven thousand five hundred dollars (\$7,500.00) per year, gross earnings, shall not be considered in determining whether a change of circumstances has occurred for purposes of modifying the Husband's alimony obligation.

On June 28, 2000, plaintiff filed a petition to terminate his spousal support payments. Plaintiff claimed that his income was no longer sufficient to provide for both his support and defendant's support. The trial court denied plaintiff's petition for termination of spousal support payments, but ordered that plaintiff's spousal support obligation would be reduced by \$680 a month, which is the amount defendant received in Social Security benefits.

In *Ackerman v Ackerman*, 197 Mich App 300, 301-302; 495 NW2d 173 (1992), this Court established the standard of review on appeal of a trial court's decision on a request to modify a spousal support award:

The trial court's findings of fact regarding the existence of a change in circumstances are reviewed by this Court under the clearly erroneous standard of review. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A finding is clearly erroneous if this Court, on all the evidence present on the record, is left with a definite and firm conviction that a mistake has been made. *Beason*, p 805. Once this Court determines that the trial court's findings of fact are not clearly erroneous, it must be decided whether the dispositional ruling, such as the awarding of alimony, is fair and equitable in light of those facts. *Sparks*, pp 146, 151-152.

"The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). "Alimony is to be based on what is just and reasonable under the circumstances of the case." *Id.* In *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), this Court listed the following factors to be considered in making an award of spousal support:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity.

"Modification of alimony provisions is authorized by MCL 552.28 . . . ." *Ackerman, supra* at 301. "An alimony award can be modified upon a showing of changed circumstances." *Moore, supra* at 654. "The modification of an alimony award must be based on new facts or changed circumstances arising since the judgment of divorce." *Id.* "The party moving for modification has the burden of showing such new facts or changed circumstances." *Ackerman, supra* at 301.

Plaintiff first contends that the trial court erred by failing to make an adequate modification of the spousal support award. Specifically, plaintiff contends that defendant has been self-supporting for approximately ten years, and that defendant's needs are being met by her own income and assets. Plaintiff argues that these factors, along with the significant reduction of plaintiff's income, demonstrates that there is no basis for the continuation of spousal support payments for defendant. We disagree.

The trial court first determined that there had been a change in circumstances that warranted consideration of the termination or modification of spousal support payments because plaintiff's income had substantially decreased. The trial court also found that each party desired to retire, that if plaintiff retired he would not be able to meet expenses at the current level of

spousal support, and that if defendant retired, her standard of living would be diminished. In addition, the evidence established that defendant earned wages of \$29,508 a year, interest income of \$6,041, dividends of \$2,573, and received \$680 in Social Security payments totaling \$8,160. Defendant estimated her monthly expenses at \$4,061, totaling \$48,732 a year. Plaintiff's earned income in the year 1999 was \$17,257, but he was obligated to pay approximately \$18,000 in spousal support payments. Plaintiff also received Social Security benefits of \$1,719 a month. Based on this record the trial court did not err in finding that the circumstances of the parties had changed sufficient to support a downward modification of plaintiff's spousal support obligation.

We also conclude that the trial court's ruling was fair and equitable in light of the facts and circumstances of this case. The trial court reviewed the parties' actual incomes and their actual needs in determining that plaintiff's spousal support payments should be decreased from \$1,500 a month to \$820 a month. Accordingly, we are not left with the firm conviction that the trial court's division was inequitable.

Next, plaintiff contends that the trial court erroneously considered defendant's possible future retirement in determining her present need for spousal support. Plaintiff states that an appropriate provision for spousal support relative to the parties' needs can be made for defendant, if and when she retires.

In *McCallister v McCallister*, 205 Mich App 84, 86; 517 NW2d 268 (1994), this Court indicated that retirement may be a change in circumstances warranting modification. Whether retirement is a change in circumstances may depend on whether the parties contemplated retirement in their agreement. See *Weaver v Weaver*, 172 Mich App 257, 262-263; 431 NW2d 476 (1988). Even where a party demonstrates that retirement is a change in circumstances, the party must also show that the resources available for living expenses have also changed. *Stoltman v Stoltman*, 170 Mich App 653, 659; 429 NW2d 220 (1988).

Here, the trial court's findings that there was a change in circumstances were not based on the possible retirement of either party. The trial court merely noted in its opinion that both parties were contemplating retirement, and concluded that if each party was to retire, plaintiff would have fewer funds with which to pay support while defendant would be in greater need of support. The trial court's reference to the fact that both plaintiff and defendant were contemplating retirement does not render its modification of the spousal support award an inequitable award.

Finally, plaintiff argues that the trial court erroneously considered plaintiff's current spouse's income in reviewing plaintiff's current ability to pay spousal support. We disagree. As plaintiff acknowledged, there was no evidence introduced to detail either his current spouse's income or her expenses. However, there was evidence that plaintiff received health care coverage under his current spouse's health insurance, that prior to his current spouse's retirement she shared in a substantial portion of the household expenses, and that his current spouse received retirement income and continued to contribute to the household expenses. We find no abuse of discretion in the trial court's consideration of this evidence of plaintiff's household

income as it affects plaintiff's ability to pay spousal support. *Edwards v Edwards*, 192 Mich App 559, 564; 481 NW2d 769 (1992). Thus, the trial court's findings were not clearly erroneous, and the trial court's spousal support award was not inequitable.

Affirmed.

/s/ Hilda R. Gage  
/s/ Kurtis T. Wilder  
/s/ Karen M. Fort Hood