

STATE OF MICHIGAN
COURT OF APPEALS

KATHY L. HOWARD,

Plaintiff-Appellant,

v

MICHAEL R. HOWARD,

Defendant-Appellee.

UNPUBLISHED
November 8, 2005

No. 254933
Ottawa Circuit Court
LC No. 00-035914-DM

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the trial court's order denying her motion to increase spousal support. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties reached a settlement agreement in the underlying divorce action, and a judgment was entered in June 2001. In addition to the property division, which essentially awarded plaintiff all the equity (approximately \$73,000) from the eventual sale of the marital home and \$100,000 of defendant's 401k retirement plan, plaintiff was awarded spousal support, beginning after the sale of the home, of \$150 per week. From the time of the divorce until plaintiff moved out of the marital home in March 2003, defendant paid expenses related to the home except for utilities. Plaintiff, who suffers from several medical conditions, including diabetes, remained insured through defendant's employer until June 2003 but thereafter went without medical insurance. After moving from the marital home, plaintiff purchased a condominium (mortgaging \$86,500 of the purchase price) and accumulated over \$38,000 in credit card debt. In addition to spousal support, plaintiff receives about \$600 per month in social security disability benefits.

Plaintiff moved for increased spousal support on the primary ground that, without health insurance to help defray the cost of her medical prescriptions, several of which were new and substantially more expensive than the ones they replaced, her living expenses have greatly increased. In denying the motion, the trial court found that plaintiff had not shown significant changes in her financial situation since entry of the divorce judgment, and that defendant did not have the ability to pay increased spousal support.

This Court reviews a trial court's factual findings relating to the modification of spousal support for clear error. A finding is clearly erroneous if this Court is left with a definite and firm

conviction that a mistake was made. *Mitchell v Mitchell*, 198 Mich App 393, 396; 499 NW2d 386 (1993). The trial court's findings are presumptively correct and the appellant bears the burden of showing clear error. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). If the trial court's findings are not clearly erroneous, then this Court must decide whether the lower court decision was fair and equitable in light of the facts. *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000).

MCL 552.28 allows for a judgment of alimony to be amended upon petition to the court. However, any modification of the award of spousal support must be based on new facts or changed circumstances arising since the judgment of divorce. The moving party bears the burden of showing changed circumstances. *Ackerman v Ackerman*, 197 Mich App 300, 301; 495 NW2d 173 (1992).

On appeal, plaintiff argues that the trial court erred in denying her motion for increased spousal support because her health conditions have worsened and that, because she did not have health insurance, her medical expenses have increased significantly. We cannot say that the trial court clearly erred in denying increased spousal support.

Assuming arguendo that the court erred in failing to recognize a change of circumstances sufficient to justify an increase in spousal support, we are unable to conclude that the court's finding that defendant is unable to pay additional spousal support is clearly erroneous, or that the court's decision is unfair or inequitable.

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder