

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2001-508**

**MAY TERM, 2002**

	}	APPEALED FROM:
	}	
Patricia Pike	}	Chittenden Family Court
	}	
v.	}	DOCKET NO. 585-7-98 Cndm
	}	
John Pike	}	Trial Judge: Linda Levitt
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendant John Pike appeals the Chittenden Family Court's denial of his motion to modify spousal support. He claims the court erred by concluding that defendant failed to establish a change in circumstances warranting his requested modification. We find no such error, and affirm.

The slim record available to this Court shows that defendant moved on May 6, 2001 to modify a December 29, 1999 order directing him to pay plaintiff, his former wife, \$1,500 per month in spousal support. The family court held a hearing on defendant's motion. At the hearing, defendant testified that he was employed as a chief financial officer or controller (he could not recall his precise title) of a company called Unexplored.com. He testified that he earned approximately \$77,000 per year, but the company closed in early May 2001 leaving him without work. Consequently, he asked to be relieved of his support obligation under the December 29, 1999 order. After plaintiff's counsel and the court examined defendant, the court denied his motion from the bench, concluding that he failed to show a real, substantial, and unanticipated change in circumstances since the December 1999 order to justify modifying the existing spousal maintenance provision. The court explained that defendant's evidence, which consisted of his testimony only, failed to establish what his actual income was since he left Unexplored.com, and failed to convince the court that he made good faith efforts to find suitable employment so he could fulfill the mandate of the December 1999 order. Defendant took this appeal.

In his one-page, pro-se brief, defendant alleges the court "ignored the law" and abused its discretion in denying his motion to modify. We disagree. The court may modify a spousal maintenance order only after the movant shows a "real, substantial, and unanticipated change of circumstances." 15 V.S.A. § 758. The burden to establish such a change is a heavy one. *Wardell v. Clapp*, 168 Vt. 592, 594 (1998) (mem.). The court may consider the underlying reasons for the obligor's post-divorce employment decisions, including the obligor's subjective intent in making those decisions. *Id.* The court must weigh the evidence and determine the credibility of the witnesses before it when determining whether the movant has met his burden of proof. *Id.* at 595.

The videotape of the motion hearing in this case demonstrates clearly that the court applied the proper legal standard when it rendered its decision. Simply put, the court did not find defendant's testimony credible in the absence of other evidence tending to support his claims, and in light of the court's findings about defendant's past employment history in the December 1999 order, a copy of which defendant did not provide to this Court. The family court was free to disbelieve defendant's representations about his situation, see *id.* at 595, and we will not substitute our judgment on defendant's credibility for that of the trial court's. See *Norse v. Melsur Corp.*, 143 Vt. 241, 244 (1983) (Supreme Court will not substitute its judgment on fact finder's credibility findings). We therefore find no abuse of the court's discretion in this instance. See *Stickney v. Stickney*, 170 Vt. 547, 548-49 (1999) (mem.) (court has discretion to modify

maintenance awards).

Affirmed.

BY THE COURT:

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice