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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-515

APRIL TERM, 2004

Rose Traverse	}	APPEALED FROM:
	}	Rutland Family Court
v.	}	DOCKET NO. 60-2-97 Rcdmd
Martin Traverse	}	Trial Judge: William D. Cohen

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

Martin Traverse appeals from an order of the Rutland Family Court reducing his spousal maintenance obligation to his ex-wife, Rose Traverse, from $1000 to $478 per month. We affirm.

Rose and Martin divorced in 1998. The original divorce decree obligated Martin to pay spousal maintenance in the amount of $1000 per month until Rose' s death or until she turned 62-years old. The court ordered maintenance because it found that Rose would be unable to pay her mortgage without assistance, and Martin had the ability to pay. At that time, Martin was working for General Electric (GE) earning approximately $18.00 per hour. The court, and the parties, expected that he would continue his employment with GE and that his income would increase over time.

In April 2002, Martin lost his job with GE. Eventually, he found alternative employment in New Hampshire, but at a significantly reduced hourly wage of $8.71 per hour. He moved to modify his maintenance obligation as a result of his decreased earnings. The court took evidence from the parties and issued its decision on the record. The court found that Martin' s new financial situation met the statutory criteria for changed circumstances. The court did not terminate Martin' s maintenance obligation, however.

The court found that Rose' s income had increased since the divorce, and that Martin' s lifestyle was not extravagant. It found that Martin owned a duplex in Rutland that he had chosen not to rent out. The court found that Martin could offer the premises for rent, but that he chose to allow one of the parties' adult sons to live there rent free instead. Accordingly, the court reduced the maintenance award by approximately the percentage that Martin' s hourly wage had been reduced following his termination from GE. Martin appealed the decision to this Court.

Modification of maintenance is permitted where a real and substantial change of circumstances has occurred since the final divorce decree. 15 V.S.A. ' 758; Stickney v. Stickney, 170 Vt. 547, 548 (1999) (mem.). When ruling on a motion to modify, the family court has substantial discretion. See Stickney, 170 Vt. at 548-49 (family court' s discretion in determining amount and duration of maintenance is broad). The court' s discretion is not unlimited, however, and we will reverse a modification order if the record shows that there is no reasonable basis for it. Id. None of Martin' s appellate arguments meets this standard.

Martin first argues that the court failed to consider whether he had the ability to pay the amount ordered in light of his present financial circumstances, and to consider Rose' s increased income or her ability to meet her own needs in making its determination. See 15 V.S.A. ' 752(b)(1), (6) (when determining amount of maintenance, court may consider payor spouse' s ability to pay and payee spouse' s ability to support herself independently). Martin' s characterization of the court' s order is not accurate. The court explicitly acknowledged Rose' s increased earnings and her efforts to remain

employed so she could meet her financial obligations. The court also considered Martin' s ability to pay, concluding that he could increase his income by renting out the home in Rutland, either to his son or to someone else. The clear implication of the court' s decision is that Martin' s choice to forego rental income from his Rutland property should not have a limiting effect on Rose' s continued right to maintenance under the 1998 final divorce decree.

Martin next argues that the court improperly computed the amount he should pay by using a formula rather than paying particular attention to the financial needs of the parties. Martin supports his argument that the court erred in utilizing this approach by pointing to this Court' s decision in Delozier v. Delozier, 161 Vt. 377 (1994). In Delozier, we reversed a maintenance award that sought to equalize the parties' income each year by using a formula applied to the parties' net incomes. Id. at 384-85, 387. The facts in this case are distinct, however. Here, the family court reduced the fixed payment by an amount that reflected the percentage Martin' s earnings had decreased. Unlike Delozier, the order in this case continues Martin' s fixed-payment obligation which will not fluctuate each year depending on the parties' respective incomes. We conclude that the family court' s computation in this case was fair and reasonable because, while it used a formula, it also tied the reduction in Martin' s payment to the actual change in his financial circumstances.

Finally, we note that this case is much like the case of Stickney v. Stickney, where the payor spouse sought to eliminate his maintenance obligation as a result of a change in financial circumstances of both spouses. See Stickney, 170 Vt. at 547-48. In that case, we reversed the family court' s order reducing the payor spouse' s obligation from $1800 to zero. The Court explained that the original maintenance award was compensatory, so a change in the parties' financial circumstances did not A erase@ the payee spouse' s entitlement to rehabilitative or compensatory maintenance. Id. at 549. Although not explicit in the parties' 1998 divorce decree, the original maintenance award in this case was in part compensatory. Thus, it was proper for the court to consider a reduction in the amount Martin must pay to Rose rather than to eliminate the obligation altogether.

Affirmed.

BY THE COURT:

_____

John A. Dooley, Associate Justice

_____

Denise R. Johnson, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice