

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-451

OCTOBER TERM, 2006

John O'Brien

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APPEALED FROM:

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v.

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Windham Family Court

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Elizabeth O'Brien

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DOCKET NO. 357-12-01 WmDmd

Trial Judge: Karen R. Carroll

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

Plaintiff, former husband, appeals from the Windham Family Court's order denying his motion to stay spousal maintenance because of unanticipated and increased medical costs. The court concluded that plaintiff failed to demonstrate a real, substantial, and unanticipated change in circumstances. We affirm.

The parties were divorced by final order stipulated to by both parties and dated July 12, 2002. Under the order, plaintiff was required to pay defendant \$825 per month for five years in spousal maintenance. Since that

time, plaintiff has made several attempts to modify the amount of maintenance. This appeal pertains to plaintiff's emergency motion, filed on September 8, 2005, to reconsider his motion to stay maintenance. On October 4, 2005, the court held a hearing where both parties were present and testified.* In support of his motion, plaintiff claimed that he was paying Ahorrific amounts@ for co-pays and prescription medication. Plaintiff explained that he had a stroke on August 15 that required a visit to the emergency room and that his diabetes now required him to take insulin. He testified that he had hypoglycemia and high blood pressure at the time of the divorce, but because of his new insulin dependence, his prescription medications cost \$244 a month. He presented documentation of an emergency room visit on August 30 indicating that he had a A[n]early 1 cm old infarct in the right putamen.@ He did not present the family court with a bill or invoice for medical services he had received.

In a written order, the family court denied plaintiff's motion finding that he had failed to prove a real, substantial and unanticipated change in circumstances. The court explained that plaintiff's medical condition had not significantly changed from the time of the final order, when plaintiff had hypertension and blood sugar problems. Additionally, plaintiff's medical problems had not affected his employment or income. The court concluded that although plaintiff was paying more in prescriptions every month, it was not unanticipated given his poor health at the time of the final order. Thus, the court denied plaintiff's motion to stay maintenance.

A party may modify spousal maintenance Aupon a showing of a real, substantial, and unanticipated change of circumstances.@ 15 V.S.A. ' 758. The burden of establishing a change in circumstances is on the party seeking modification. Mayo v. Mayo, 173 Vt. 459, 462 (2001). The threshold determination of changed circumstances is discretionary, and we will affirm the family court's decision unless the party challenging the order demonstrates that the court abused its discretion. deBeaumont v. Goodrich, 162 Vt. 91, 98 (1994).

We conclude that the trial court did not abuse its discretion in concluding that plaintiff failed to demonstrate a substantial and unanticipated change of circumstances. Plaintiff himself testified that at the time of the final order he suffered from hypertension and blood sugar problems. Although these conditions have worsened, as the trial court noted such issues were not unanticipated at the time of the final order and have not affected

plaintiff=s ability to work. As for excessive medical costs, plaintiff did not provide evidence to the trial court of substantially increased medical costs. He submitted evidence of prescription costs. In addition, he testified that he made seven visits to the hospital, which each required a copay, and that he would be required to pay twenty percent of his August emergency room visit, but he provided no documentation of any outstanding balances. On appeal, plaintiff has submitted medical bills; however our review is limited to the evidence presented to the trial court, and we cannot consider additional facts outside the record. Gus= Catering, Inc. v. Menusoft Sys., 171 Vt. 556, 557 (2000). Given the evidence available to the trial court, we affirm the court=s finding that plaintiff failed to demonstrate a substantial and unanticipated change of circumstances.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

* At the hearing, defendant sought to increase maintenance based on a lost part-time job and increases in property taxes and fuel bills. The court denied defendant=s motion, finding this change was not substantial or unanticipated. Defendant has not appealed that ruling to this Court.

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