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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-031

AUGUST TERM, 2008

Diane Tallant	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
	}	
Peter Quist	}	DOCKET NO. F364-5-05 CnDmd
		Trial Judge: Geoffrey W. Crawford

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

Husband appeals the family court's order concluding that he failed to make a sufficient threshold showing of changed circumstances to support his motion to modify maintenance. We affirm.

The parties were divorced in March 2006 following a twenty-seven-year marriage in which husband was the primary wage earner and wife the primary care giver for the parties' two children. Based on the parties' stipulation, the final divorce order required husband to pay wife $3300 per month in maintenance for a period of fifteen years.

In December 2006, husband filed a motion to modify maintenance, but the motion was denied on a default basis after he failed to appear for a hearing. Husband filed a second motion to modify in August 2007, contending that wife's remarriage and acceptance of a job in Idaho amounted to a real, substantial, and unanticipated change of circumstances that entitled him to a reduction in his maintenance obligation. A hearing on the motion was held on December 7, 2007. At the hearing, the family court questioned the attorneys, and to a lesser extent the parties, to determine what facts were not in dispute. No witnesses were called. Following the hearing, the court issued a brief order concluding that, based on the undisputed facts, husband had failed to satisfy the threshold requirement of showing a real, substantial and unanticipated change of circumstances sufficient for the court to retain jurisdiction to modify the current maintenance award. See Taylor v. Taylor, 175 Vt. 32, 36 (2002) ("Before the court can modify a maintenance order, it must find that there has been a real, substantial and unanticipated change of circumstances; if the required change has not occurred the court has no jurisdiction to modify the order.").

On appeal, husband argues that the family court erred by not finding changed circumstances and by not taking evidence on the issue of whether there were changed circumstances. We examine husband's second claim of error first. According to husband, his counsel was prepared for an evidentiary hearing, but the court refused to take evidence regarding his contention that wife's financial circumstances were substantially improved since her remarriage and new employment. Husband asserts that he was blindsided by the court's decision to issue a ruling without taking evidence, and that he was denied the opportunity to present evidence that would have demonstrated a substantial change of circumstances.

Upon review of the record, we disagree with husband's assessment of what occurred at the December 7 hearing. At the start of the hearing, the court suggested that the parties might be able to agree on many of the financial numbers concerning whether there had been changed circumstances. The attorneys for both parties then engaged in a dialogue with the court on how much wife's new husband earned, what his expenses were, how much wife earned at her new job, what her expenses were, and what husband was currently earning. Husband's attorney emphasized that the greatest change was wife earning $31,000 from her new job in Idaho. At one point, the court stated that the parties were welcome to present testimony if they could not agree on the facts. Toward the end of the hearing, husband's attorney indicated that the only other piece of evidence she wanted to make the court aware of was husband's expense in hiring a nanny for the parties' younger daughter after the parties agreed that the child would live with husband while wife was working out of state. The court closed the hearing by telling the attorneys and the parties that it would try to put something together and get it out in a day or so. Five days later, the court issued its written decision denying husband's motion based on his failure to meet his burden of showing changed circumstances.

These facts indicate that, although husband's attorney may have initially expected to present testimony at an evidentiary hearing, she was satisfied with the court deciding the issue of whether changed circumstances existed based on its consideration of the facts agreed upon by the attorneys and parties at the hearing. Generally, the trial court should provide the moving party with an opportunity to present evidence unless the court finds that there is no genuine issue as to any material fact. See V.R.C.P. 78(b)(2). However, "Rule 78(b)(2) does not require a hearing when what is alleged, even if proven, would not change the result," and our standard for reviewing a trial court's decision not to hold a hearing "is narrow and depends on an affirmative showing that the court abused or withheld its discretion." In re D.B., 161 Vt. 217, 222 (1993). Under the circumstances in this case, husband has failed to demonstrate that the court abused its discretion by not holding an evidentiary hearing on the question of whether changed circumstances existed.

Husband also argues, however, that he presented sufficient facts to compel the court to find changed circumstances. Again, we disagree. In light of the facts agreed to at the December 7 hearing, the court found that: (1) wife's new husband had approximately $36,000 in annual income after expenses and taxes; (2) husband was earning at least $100,000 in gross income, which was similar to his income at the time of the divorce; (3) wife was earning $31,000 at her new job in Idaho, an amount that was consistent with the high end of what it was expected she could earn following the divorce; (4) wife took the job in Idaho because she was unable to find a job in Vermont; (5) while she was living in Idaho, wife was sharing the expenses of the condominium in Vermont purchased by her and her husband; and (6) both parties recognized that

the current child support order would have to be modified as the result of their agreement that their youngest child would reside with husband while wife was working in Idaho.

Based on these findings, the court concluded that mother's employment was anticipated under the final divorce order, and that, given her and her new husband's expenses, her financial circumstances had not improved to any significant degree. See Taylor, 175 Vt. at 38 ("[W]e have viewed remarriage as relevant to an ongoing maintenance obligation only to the extent it bears on the 'financial security' of the recipient spouse."). Because the court did not find changed circumstances, it did not need to consider what portion of the parties' maintenance award in this long-term marriage reflected compensation for wife's contribution as a homemaker. See id. at 37, 39-40 (noting that maintenance may also reflect compensation for homemaker contributions). We find no abuse of discretion in the court's determination that father failed to show changed circumstances sufficient to alter the maintenance award. See Miller v. Miller, 2005 VT 122, ¶ 15 (stating that trial court's ruling on maintenance will stand unless "its discretion was erroneously exercised or was exercised upon unfounded considerations or to an extent clearly unreasonable in light of the evidence" (quotation omitted)). The court acted well within its discretion in concluding that wife's increased expenses were a legitimate result of a move necessitated by her inability to obtain a job in Vermont, and in deferring to a child support proceeding regarding issues surrounding father's increased expenses associated with his daughter's residence with him.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice