

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-190

DECEMBER TERM, 2010

Kristin Luce	}	APPEALED FROM:
	}	
	}	
v.	}	Addison Family Court
	}	
	}	
Ark Lemal	}	DOCKET NO. 96-5-08 Andm

Trial Judge: Cortland Corsones

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

Husband appeals the trial court's order granting his motion to modify maintenance but reducing his maintenance obligation less than what he wanted. We affirm.

The parties were married for fourteen years and had two children, who were seven and nine when the parties divorced in January 2009. The divorce order was based upon the parties' stipulation, which required husband to pay wife monthly maintenance in the amount of \$1700 from October through December 2008, \$2200 from January through July 2009, and \$1600 from August 2009 through September 2013. In July 2009, wife filed a motion to enforce and for contempt based upon husband's failure to make the required maintenance payments. In October 2009, the trial court granted wife's motion and denied husband's motion to modify maintenance, concluding that (1) the poor economy had not affected husband's business for a long enough period of time to justify a modification, particularly since the income from husband's business had been volatile in the past; (2) husband had excellent income in the early months of 2009 but used the money on extensive vacations and funding his IRA rather than reserving some of it for his future maintenance obligation; and (3) husband's resentment toward paying maintenance had factored into his decision not to meet his obligation. The October 2009 order, which husband did not appeal, required him to pay approximately \$6000 in arrears to his wife from his IRA and to resume the scheduled maintenance payments. Husband paid the arrears but immediately began falling behind on the required monthly payments.

In January 2010, wife filed a second motion to enforce and for contempt and husband filed a second motion to modify maintenance. In May 2010, following an evidentiary hearing, the trial court issued an order reducing husband's maintenance obligation from \$1600 to \$1100, retroactive to the date of his January 2010 motion. The court acknowledged that the income from husband's business had declined because of the economic downturn, but concluded that—considering the parties' respective incomes and reasonable needs—husband would have to find reductions in his expenses sufficient to pay wife \$1100 in monthly maintenance. On appeal, husband argues that the evidence demonstrated that he had no ability to reduce his expenses and pay \$1100 in maintenance.

Upon review of the record, we conclude that husband has failed to demonstrate that the court abused its broad discretion in reducing his monthly maintenance obligation from \$1600 to

\$1100. See Chaker v. Chaker, 155 Vt. 20, 25 (1990) (stating that trial court has broad discretion in determining amount and duration of maintenance, and that court's award will not be set aside on appeal unless there is no reasonable basis to support it); Quesnel v. Quesnel, 150 Vt. 149, 151 (1988) (noting that party challenging maintenance award has burden of showing that no reasonable basis exists for award). As husband acknowledges, he is not challenging the court's findings regarding his income and expenses. Among the court's findings were the following: (1) husband had a net profit from his business of \$64,404 in 2007, \$57,172 in 2008, and \$49,663 in 2009 (including deductions he claimed for car expenses); (2) husband's 2010 income was on a pace comparable to 2009; (3) husband's business had \$8000 in accounts receivable, which wife claimed was an unusually high amount; (4) husband paid his girlfriend \$1500 for room and board; (5) husband claimed monthly expenses of \$3200; (6) husband had been able to adjust his living expenses in the past to meet his financial needs; and (7) husband had always been able to find money to pay his girlfriend every month and to find start-up costs for his new businesses, even at times when he was not paying his court-ordered spousal maintenance. The court also found that wife, who had the children seventy percent of the time, had average monthly living expenses of \$3900, with an imputed monthly income of \$2000.

These findings alone support the court's award, which reduced his monthly maintenance obligation by over thirty percent based on a lower percentage of reduced income. See Poston v. Poston, 160 Vt. 1, 7 (1993) (noting that purpose of spousal maintenance is to rectify inequality between parties' financial positions). Husband claims that he is incapable of reducing his living expenses, as evidenced by the fact that the room and board his girlfriend charges him is in line with IRS national standards for a person living in Addison County. According to husband, the court is forcing him to negotiate a lower rent with his girlfriend, even though he testified that she would force him to leave rather than accept a lower rent. None of these or other contentions he makes in his brief demonstrate that he is incapable of paying the court-ordered reduced maintenance.

Husband also argues that the trial court abused its discretion by making the reduced maintenance obligation retroactive only to the date of his second motion to modify maintenance filed in January 2010. According to husband, the court should have made his reduced maintenance obligation retroactive to April 2009, the time at which the court found that his business started feeling the effects of the economic downturn. We find no abuse of discretion. Husband did not appeal the trial court's October 2009 order determining that, at that point, he had failed to demonstrate a substantial change of circumstances sufficient to justify a modification of his maintenance obligation. It was appropriate for the court to make the reduced award retroactive to the date of husband's ultimately successful motion to modify maintenance.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice