

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-465

MAY TERM, 2004

	}	APPEALED FROM:
	}	
Peggy S. Beauchemin	}	Chittenden Family Court
	}	
v.	}	DOCKET No.148-3-99 Cndm
	}	
Theresa Marie Zittritsch	}	Trial Judge: Hon. David A. Jenkins
	}	
	}	

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

Defendant Theresa Zittritsch appeals from an order denying her request to eliminate her spousal maintenance obligation to plaintiff Peggy Beauchemin. The court determined that no unanticipated, real, and substantial change had taken place to warrant the modification Theresa sought. We affirm.

The parties were divorced in 2001 after Theresa, formerly Terrence, decided to pursue gender reassignment surgery. In addition to child support for the parties= three minor children, Theresa is responsible for paying spousal maintenance to Peggy. The order requires Theresa to pay \$2400 per month for one year from the date of the original order, to be reduced by fifty cents for every dollar Peggy earns through work in excess of eighty-six hours per month. After that, Theresa must pay \$1050 per month until the parties= second child reaches the age of eighteen or finishes high school, whichever is later. When that occurs, the monthly payment goes down to \$286. The obligation ends when the parties= youngest child turns eighteen or finishes high school.

At the time of the final divorce order in June 2001, the youngest child was approximately nine years old. Peggy was working part-time, and Theresa was working full-time at IBM. Peggy= s annual income from her part-time employment was approximately \$24,750, and Theresa= s was about \$120,000. In July 2001, Peggy remarried. Her husband earns roughly \$50,000 per year, and he shares living expenses with Peggy. Consequently, Theresa moved to terminate the spousal maintenance provision of the final divorce decree, claiming that Peggy was able to support herself with the assistance of her new husband. The court initially denied the motion. On appeal, a panel of this Court remanded the matter back to the family court, directing it to consider whether Peggy= s financial circumstances had significantly changed since her remarriage. See Zittritsch v.Zittritsch, Docket No. 2002-097, at 2 (Vt. Sept. 25, 2002).

In a written order dated June 6, 2003, the family court again denied Theresa= s motion to modify. The court found that although Peggy remarried and had access to additional income, her living standard had not substantially changed. Her expenses went down somewhat, but not enough for this change to be considered A real, substantial, or unanticipated.@ The court also found that Theresa= s income increased by approximately \$19,000 since the divorce. Even with the additional income from her current husband, the court concluded that Peggy= s financial status and standard of living still did not reach the level she enjoyed while married to Theresa. This appeal followed.

Theresa, who represents herself on appeal, takes issue with the court= s order in general. She argues that the court failed to adequately consider the increased income Peggy enjoys now that she is remarried. The family court has authority to modify a spousal maintenance award upon finding that a real, unanticipated, and substantial change of circumstances has occurred since the divorce. 15 V.S.A. ' 758; Taylor v. Taylor, 819 A.2d 684, 688 (Vt. 2002). The burden is on the

moving party to demonstrate the required change of circumstances, and that burden is a heavy one. *Wardwell v. Clapp*, 168 Vt. 592, 594 (1998) (mem.). When determining whether a change of circumstances has occurred, the family court has discretion. See *Taylor*, 819 A.2d at 688 (threshold determination of changed circumstances is a discretionary one). Therefore, we review the order here to see whether the court abused or withheld its discretion. See *id.* (Supreme Court will not disturb a discretionary ruling absent a showing of abuse).

In general, spousal maintenance serves to ameliorate the income inequity resulting from divorce as well as to A equalize the standard of living of the parties for an appropriate period of time.@ *Stickney v. Stickney*, 170 Vt. 547, 549 (1999) (mem.). Remarriage is, therefore, A relevant to an ongoing maintenance obligation only to the extent it bears on the > financial security= of the recipient spouse.@ *Taylor*, 819 A.2d at 689. Maintenance provisions usually involve some prediction of the parties= future financial circumstances. *Id.* at 690. Thus, changes to a party= s financial circumstances must be substantial to warrant modifying an award that necessarily contemplates, to some extent, future events.

In this case, the court found that Peggy= s standard of living had not substantially changed even with her new husband= s additional income. It acknowledged a downward change in Peggy= s expenses, but found that the change was not substantial. Indeed, the court found that some of Peggy= s expense savings would be temporary. The court found that Peggy= s own income increased as well, but that change was anticipated at the time of the divorce as the maintenance award reflects. As to Theresa= s claim that paying maintenance was a hardship for her, the court found that Theresa= s spending habits were the source of those difficulties. The court determined that despite the increased income and lower monthly expenses, Peggy= s financial circumstances after remarriage reflected a lower standard of living than the standard she enjoyed while the parties were married. On this record, we find no abuse of the court= s discretion in concluding that Theresa failed to demonstrate a substantial change of circumstances that would permit the court to revisit the spousal maintenance award set forth in the final divorce order.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice