

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-106

OCTOBER TERM, 2008

William Hoyt	}	APPEALED FROM:
	}	
v.	}	Windham Family Court
	}	
Mary Hoyt	}	DOCKET NO. 90-4-06 Wmdm

Trial Judge: Karen R. Carroll

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

Husband appeals from the family court’s order denying his motion to modify spousal maintenance. Husband argues that the family court abused its discretion in concluding that there was no real, substantial, and unanticipated change in material circumstances after husband did not remarry as anticipated at the time of the final hearing. We affirm.

The parties were divorced in September 2007. In the final order, the court explained that husband was engaged, and that he planned to relocate and live with his fiancée. In assessing husband’s monthly expenses, the court found that the fiancée was not contributing to household expenses, but that she could contribute to the household expenses in their new home. The court did not set a monetary figure to the fiancée’s potential contribution. Based on all of the evidence, including financial information about husband’s projected income and expenses, the court granted wife \$940 in monthly spousal maintenance. Neither party appealed the final order.

Husband’s marriage did not occur, and in January 2008, husband moved to modify his maintenance obligation. Husband argued that the failed engagement was a real, substantial, and unanticipated change in circumstances because the court’s original order depended on him receiving support from his fiancée to manage household expenses. The family court denied the motion. The court explained that although husband had anticipated getting married at the time of the final hearing, the evidence indicated that husband’s fiancée was not contributing to household expenses at that time and the court’s calculation of maintenance did not factor in any contribution from the fiancée. Thus, the court concluded that there was no real, substantial, and unanticipated change in circumstances because husband was in the same financial situation at the time of modification as at the final hearing.

Husband appeals. He argues that the court's findings in the final order contemplated that his fiancée would contribute to household expenses. Without this expected contribution, husband contends that he cannot meet the maintenance obligation. Husband argues that the trial court's explanation in response to his motion to modify is contrary to its original findings and unreasonable.

The family court may modify spousal maintenance upon a showing of a real, substantial, and unanticipated change in circumstances. 15 V.S.A. § 758. The party seeking modification has the burden of proving a change in circumstances, and the determination is made considering the context of the surrounding circumstances. Miller v. Miller, 2005 VT 122, ¶ 15, 179 Vt. 147. "The threshold determination of changed circumstances is discretionary." Taylor v. Taylor, 175 Vt. 32, 36 (2002). This Court will defer to the family court's discretionary determination unless its discretion was exercised erroneously or its determination was unreasonable in light of the circumstances. Id.

We conclude that the court did not abuse its discretion in denying husband's motion for modification. Although the final decision acknowledged that husband contemplated marrying and sharing a household with his fiancée, the court's decision did not factor in income from husband's fiancée. The only evidence of income that the trial court used was husband's own estimation of his income. In assessing husband's expenses, the court mentioned that husband would share a household with his fiancée and that she "can, and should, contribute to the household expenses on an equal basis." The court did not, however, assign any amount of financial contribution to this possible expense sharing, and the court's decision on maintenance does not mention any such financial contribution. The court's maintenance decision rested on its findings that wife's income and potential for future earnings was much less than husband's, and that wife could not meet her reasonable needs or support herself at a standard of living close to that maintained during the marriage. See 15 V.S.A. § 752 (court has discretion to grant spousal maintenance where party seeking maintenance lacks sufficient income, and is unable to support herself at the standard of living established during the marriage).

Husband cites several cases involving remarriage to support his proposition that his failed engagement is a substantial change in circumstances. While the cases that husband cites on remarriage are not particularly helpful because they focus on the remarriage of the recipient spouse, the underlying principles of those cases support our decision in this situation. First, we have explained that remarriage or cohabitation is relevant only insofar as it affects the financial situation of the parties. See Taylor, 175 Vt. at 38 (explaining that remarriage is relevant to "an ongoing maintenance obligation only to the extent it bears on the 'financial security' of the recipient spouse"); see also Miller, 2005 VT 122, ¶ 18 ("[C]ohabitation by the recipient spouse can result in reduction or elimination of a maintenance award only if it improves the financial circumstances of the recipient spouse enough to substantially reduce the need for maintenance."). By analogy, husband's failed engagement is relevant only insofar as it changes his financial situation. As the court credibly found, husband's fiancée was not contributing financially at the time of the final order, thus, there was no change in husband's financial situation between the time of the final order and when husband filed for modification.

Second, even accepting husband's view that the trial court envisioned husband sharing household expenses with his fiancée, in Miller, we explained that sharing of household expenses

does not alone result in the necessary “substantial” change in circumstances that is required to meet the threshold under § 758. See Miller, 2005 VT 122, ¶ 20 (explaining that a recipient’s spouse’s sharing of household expenses does not create a substantial improvement in financial circumstances and therefore is insufficient to meet the threshold requirement). Whatever small contribution husband’s fiancée may have made to his household expenses, this was not a significant source of income that the trial court considered and the trial court did not err in concluding that its loss was insufficient to meet the statutory threshold requirement.

On a final note, there is no need to address husband’s argument that spousal maintenance is excessive and he is not financially able to meet his obligation. Because husband did not appeal the final divorce order, the only means for modifying his spousal support obligation at this stage is by demonstrating a real, substantial, and unanticipated change in circumstances, which husband has failed to do.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice