

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002185-MR

RON MCCLOUD

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 94-CI-00416

SHEILA DIANA MCCLOUD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order denying appellant's motion to reduce his maintenance obligation.

Because a provision in the separation agreement incorporated into the decree expressly stated that the agreement could not be modified without the written agreement of both parties, the trial court correctly ruled that the maintenance award was non-modifiable. Hence, we affirm.

Ron McCloud and Sheila McCloud were married in 1973 and were divorced by decree of dissolution entered on June 22,

1995. The decree incorporated verbatim a separation agreement entered into by the parties. As to maintenance, the agreement provided:

Respondent [Ron] shall pay to the Petitioner [Sheila] the sum of \$1,200.00 per month alimony until June 1, 1996, unless Petitioner prior to said time becomes deceased, remarries or otherwise cohabitates. On June 1, 1996, or within a reasonable time thereafter, Respondent shall pay to the Petitioner as lump sum alimony the sum of \$7,500.00, unless Petitioner has prior to said time become deceased, remarried or otherwise cohabitates. Beginning July 1, 1996, Respondent shall pay to the Petitioner the sum of \$1,000.00 per month alimony until such time as Petitioner becomes deceased, remarries, or otherwise cohabitates.

Another provision in the agreement stated as follows:

That this Agreement shall not be altered, changed or modified except that it be done in writing and signed by the parties hereto in accordance with the express terms hereof.

On April 25, 2003, Ron filed a motion to reduce his maintenance obligation because of a change of employment which resulted in a reduction in his income. On September 3, 2003, the court entered an order denying Ron's motion to modify the maintenance award. Subsequently, the court entered an order denying a motion to alter, amend or vacate the September 3 order, specifically adjudging:

1. The Court was of the opinion, and is of the opinion, that the maintenance awarded in

the decree was of the type that is non-modifiable under Kentucky law.

2. The Court was of the opinion and is of the opinion that the evidence of record does not demonstrate a sufficient showing that the financial circumstances of the parties are such that the current amount of maintenance is unconscionable nor has there been sufficient showing of Respondent's change of financial circumstances to warrant a finding that those changes are so substantial and continuing as to make the current amount of maintenance unconscionable.

Ron now appeals from the above order. Interestingly, Ron does not challenge the court's ruling that there was insufficient evidence of a change of financial circumstances so substantial and continuing to make the current amount of maintenance unconscionable. Rather, Ron only appeals the court's ruling that the maintenance awarded in the decree could not be modified to the extent that said ruling means that the maintenance award could never be modified, even upon a sufficient showing of change in financial circumstances.

It indeed appears that the first finding in the court's last order is an adjudication that the maintenance award cannot be modified at all, which is at odds with the court's second finding that appellant did not meet his burden of proving a change of circumstances warranting modification. In any event, KRS 403.250(1) provides as follows relative to modification of maintenance awards:

Except as otherwise provided in subsection (6) of KRS 403.180, the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

KRS 403.180(6) states:

Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms if the separation agreement so provides. Otherwise, terms of a separation agreement are automatically modified by modification of the decree.

"Pursuant to KRS 403.180(6), the terms in a settlement agreement related to maintenance are subject to modification *unless the agreement expressly prohibits modification.*" Wheeler v. Wheeler, 154 S.W.3d 291, 295 (Ky.App. 2004). Here, the parties' agreement, which was incorporated verbatim into the decree, expressly stated that the agreement could not be modified without the written approval of both parties. As the Court stated in Brown v. Brown, 796 S.W.2d 5, 8 (Ky. 1990) regarding the application of KRS 403.180(6), "the parties may settle their affairs with a finality beyond the reach of the court's continuing equitable jurisdiction elsewhere provided." Accordingly, the lower court correctly adjudicated in this case

that the maintenance award was not the type that could be modified under KRS 403.250(1).

For the reasons stated above, the order of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William R. Palmer, Jr.  
Greenup, Kentucky

BRIEF FOR APPELLEE:

W. Jeffrey Scott  
Grayson, Kentucky