

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000899-MR

CHARLES M. MILLS

APPELLANT

v.

APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JULIE PAXTON, FAMILY JUDGE
ACTION NO. 96-CI-00642

CAROLYN C. MILLS

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

DIXON, JUDGE: Appellant, Charles Mills, appeals from an order of the Floyd Circuit Court denying his second motion to modify his maintenance obligation. Finding no error, we affirm.

Charles and Carolyn Sue (Sue) Mills were married on September 24, 1966.

On October 1, 1996, the Floyd Circuit Court entered a decree dissolving the parties'

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

marriage. The decree incorporated by reference an agreed property settlement that provided, in part, that Charles would pay Sue \$4,000 per month in spousal maintenance for the remainder of her lifetime.

In September 2003, Charles filed a motion to modify maintenance on the grounds that his financial circumstances had changed since the parties entered into the agreed property settlement. The trial court denied the motion, ruling that Charles had not established a showing of changed circumstances so substantial and continuing as to make the terms of the settlement agreement unconscionable. KRS 403.250. In June 2005, Charles again moved for a modification of maintenance. Following an evidentiary hearing, the trial court denied the motion. This appeal ensued.

Charles argues that the trial court erred in ruling that he failed to show a change in circumstances so substantial and continuing as to make the terms of the settlement agreement unconscionable. Charles points out that he introduced evidence indicating at the time of the 1996 settlement agreement that his adjusted gross income (AGI) was \$2,384. However, his business interests thereafter declined resulting in an adjusted gross income of -\$30,033 in 2002, -\$26,857 in 2003, and -\$42,800 in 2004. As a result, Charles contends that his current financial condition renders his \$4,000 per month maintenance obligation unconscionable.

Sue counters that the 2002-2004 AGI figures are deceiving because Charles changed accounting practices in 2002 and began claiming a full deduction on his tax forms for maintenance payments. Sue notes that Charles showed a negative AGI of

-\$8,609 in 1995, the year before entering into the settlement agreement. However, had Charles' current accounting practices been utilized, his AGI for 1995 would have actually been -\$61,409. Thus, Sue argues that there has been no substantial change in Charles' financial condition since the 1996 settlement agreement. We agree.

Modification of maintenance is governed by KRS 403.250, which provides in relevant part,

(1) 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.

“Unconscionable” means “manifestly unfair or inequitable.” *Shraberg v. Shraberg*, 939 S.W.2d 330, 333 (Ky. 1997); *Wilhoit v. Wilhoit*, 506 S.W.2d 511, 513 (Ky. 1974). Since the statute is intended to provide for relative stability, evidence for the movant must be compelling for the trial court to grant the relief requested. As such, a party seeking modification bears a substantial burden. *McKenzie v. McKenzie*, 502 S.W.2d 657 (Ky. 1973). The determination of questions regarding maintenance is within the broad discretion of the trial court, *Barbarine v. Barbarine*, 925 S.W.2d 831 (Ky. App. 1996), and an appellate court will not disturb the trial court's decision absent an abuse of that discretion. *Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992). Further, an appellate court is not authorized to substitute its own judgment for that of the trial court where the trial court's decision is supported by substantial evidence. *Combs v. Combs*, 787 S.W.2d 260, 262 (Ky. 1990).

The trial court herein found that although Charles' adjusted gross income had increased and decreased throughout the years, it had essentially varied very little since the 1996 settlement agreement. Further, the trial court noted that there were a number of discrepancies in the amount of rental income Charles was actually receiving on a monthly basis because several of his properties had been transferred into his mother's name without valuable consideration. Thus, the trial court determined that Charles had the potential to receive far greater income than he was reporting. As a result, the trial court concluded that Charles' changes in income were not so substantial and continuing to warrant a modification of the maintenance obligation.

The trial court's finding that Charles' maintenance obligation was not unconscionable was supported by substantial evidence. And contrary to Charles' claim, the trial court clearly considered all of his financial information, not just that since his prior 2003 motion for modification of maintenance. *See Williams v. Williams*, 554 S.W.2d 880 (Ky. App. 1977). As such, because we conclude that the trial court acted within its broad discretion, we will not disturb such decision on appeal. *Perrine, supra*.

The Floyd Circuit Court's order denying Charles' motion for a modification of maintenance is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brian Cumbo
Inez, Kentucky

BRIEF FOR APPELLEE:

B.D. Nunnery
Prestonsburg, Kentucky