[Cite as *McCree v. McCree*, 2009-Ohio-2639.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DEBORAH McCREE,	)	
	)	CASE NO. 08 MA 109
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	O P I N I O N
	)	
JOSEPH McCREE,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Domestic Relations Division, Case No. 92DR781.

JUDGMENT: Affirmed in part; Reversed in part; Case Remanded.

APPEARANCES:

For Plaintiff-Appellee:
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For Defendant-Appellant:
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JUDGES:
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: June 3, 2009

VUKOVICH, P.J.

¶{1} Defendant-appellant Joseph McCree appeals the decision of the Mahoning County Common Pleas Court, Domestic Relations Division, which overruled his motion to modify his support obligation and found him in contempt of court for failing to pay his arrearage in accordance with a prior court order. On appeal, he contends that the contempt finding was contrary to the manifest weight of the evidence because he established the defense of inability to pay and because he substantially complied with the court order that was violated. He also complains that the trial court made some findings that are not factually correct. Finally, he urges that the court abused its discretion in denying his motion to modify his support obligation and to decrease the monthly amount to be paid toward his arrearage.

¶{2} The trial court's finding of contempt is upheld. However, the trial court's refusal to modify appellant's current spousal support obligation is reversed, and the matter is remanded for downward modification. The figure on remand will necessitate a reconsideration of the monthly amount required to be paid toward the arrearage, and thus, the trial court's decision on that matter is reversed and remanded as well.

STATEMENT OF THE CASE

¶{3} The parties were divorced in the mid-nineties. At the time, appellant claimed that although he worked over twelve hours per day, his income from 1991 through 1993 ranged from $5,500 to $13,000. The court found that these figures were inaccurate because he utilized cash from his business prior to reporting it. Thus, the trial court imputed income to appellant at $36,000 per year in a 1995 judgment entry. See *McCree v. McCree* (Jan. 13, 1997), 7th Dist. No. 95CA231. See, also, *McCree v. McCree* (Mar. 22, 2000), 7th Dist. No. 98CA129 (upholding use of 1995 entry).

¶{4} From this figure, appellant was ordered to pay child support for three children at $267 per child per month and spousal support of $248 per month. The child support orders for the two oldest children were soon terminated due to their emancipation.

¶{5} In September of 2000, appellee filed a motion to show cause, alleging that appellant was in contempt of court for failing to pay sufficient child support and

spousal support. Appellant was found in contempt and sentenced to thirty days in jail with the purge conditions of paying the following monthly amounts: $267 in current child support; $248 in current spousal support; and $100 toward the arrearage. At the status hearing four months later, it was found that he had only paid $153 per month rather than the $615 monthly amount set forth as a purging condition. Thus, the jail sentence was imposed upon him. See *McCree v. McCree*, 7th Dist. No. 01CA228, 2003-Ohio-1600.

¶{6} The last child was emancipated in 2003. A May 2006 administrative order from the Child Support Enforcement Agency (CSEA) informed appellant that he owed over $65,000 in arrearage, toward which he was obligated to pay $367.34 per month. Adding the current spousal support obligation of $248 per month plus processing, his monthly obligation was said to be $627.65. When he did not object, the court adopted the order in a September 20, 2006 entry.

¶{7} Still, appellant paid only $153 per month. Consequently, CSEA imposed an administrative driver's license suspension. On September 10, 2007, appellant filed a motion to lift the license suspension and a motion to modify his support obligation. On October 16, 2007, CSEA filed a motion to show cause, alleging that appellant was in contempt of the September 20, 2006 order.

¶{8} The magistrate held a hearing on the motions. Appellant testified that he once was a local truck driver, working for his father and reporting approximately $30,000 in income until being injured in an accident in the eighties. He then opened McCree Tire, which he now operates in a garage by his residence. Appellant produced tax returns showing that he reported approximately $9,000 in income in 2004, 2005, and 2006. (Tr. 23-26). He estimated that his income for 2007 would be the same. (Tr. 30).

¶{9} He emphasized that he had sole custody of his nine-year-old son (not a child of appellee) for whom he received no support. (Tr. 34). He stated that his rent and utilities total $350 per month, his food costs $300 per month, he pays for school lunches and spends nearly $500 per month on day care in the summer. (Tr. 35, 38). He admitted that he could perform a job such as a cashier but explained that he could not work for a dealership as a mechanic because he is not certified. (Tr. 43). He

disclosed that he has not looked for other work because no one pays well and opined that he would be discriminated against due to his two prior spinal operations. (Tr. 45-46). He concluded that $150 per month is all he can afford to pay. (Tr. 39).

¶{10} Appellee testified that she has worked full-time at Giant Eagle for seventeen years and that she has also worked twenty-five hours per week at Subway for the past four years. She also occasionally pickets for her union for $7.50 per hour. (Tr. 8-10). Her total yearly income is $30,000. (Tr. 13). She noted that she has credit card bills, which contain expenses related to when the children were minors. (Tr. 14, 18). She agreed that appellant has been paying $153 per month for a substantial period of time. (Tr. 17). She noted that he once explained this payment by saying, "You give them what they need, I'll give them what they want." (Tr. 72). She disagreed that he only earned what he reported on his tax returns. (Tr. 71).

¶{11} On March 13, 2008, the magistrate issued a decision denying appellant's motion to modify his support obligation and finding him in contempt. The magistrate imposed thirty days in jail (the maximum, noting that although this was his second contempt, the motion for contempt stated that it was only his first). The magistrate allowed him to purge himself of contempt by immediately paying $248 per month in spousal support, the prior order of $367.34 per month in arrearage, an additional $50 per month toward the arrearage balance, plus processing fees for a total of $678.65 per month. Appellant objected to the trial court.

¶{12} On May 13, 2008, the trial court overruled his objections, adopted the magistrate's decision, issued its own opinion as well and entered final judgment in accordance with that of the magistrate. Appellant filed timely notice of appeal.

ASSIGNMENT OF ERROR NUMBER ONE

¶{13} Appellant's first assignment of error contends:

¶{14} "THE DECISION OF THE MAGISTRATE TO FIND APPELLANT IN CONTEMPT AND THE SUBSEQUENT ADOPTION OF THAT DECISION BY THE JUDGE WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN REGARDS TO APPELLANT'S PROPERLY RAISED DEFENSE OF INABILITY TO PAY."

¶{15} In a civil contempt proceeding, the movant bears the initial burden of proving by clear and convincing evidence that the other party violated a court order. See *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253. See, also, *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 139; *Young v. Young* (May 7, 2001), 7th Dist. No. 00BA8. Clear and convincing evidence is proof that produces in the mind of the fact-finder a firm belief or conviction as to the facts sought to be established. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74. Once the prima facie case has been established by clear and convincing evidence, the burden shifts to the non-moving party to either rebut the initial showing of contempt or establish an affirmative defense by a preponderance of the evidence. *Pugh*, 15 Ohio St.3d at 140.

¶{16} A trial court's judgment will not be reversed as being against the manifest weight of the evidence if the court's judgment is supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. The trial judge is best able to observe the witnesses' demeanor, gestures and voice inflections and use those observations in weighing the credibility of the testimony. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

¶{17} It has also been stated that an appellate court's standard of review of a trial court's contempt finding is abuse of discretion. *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 75. An abuse of discretion exists if the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

¶{18} Under this assignment of error, appellant contests the court's decision regarding his defense of inability to pay. Inability to pay can be a defense to contempt, and the alleged contemnor has the burden to prove such defense. See *Pugh*, 15 Ohio St.3d at 139; *State ex rel. Cook v. Cook* (1902), 66 Ohio St. 566, ¶1 of syllabus. However, even if there is an inability to pay the full amount ordered, this does not excuse an obligor's payment of a partial amount where there is found to be an ability to pay more than the amount paid. *Allen v. Allen* (1988), 59 Ohio App.3d 54, 56 (7th Dist.). See, also, *Tremaine v. Tremaine* (1996), 111 Ohio App.3d 703, 709 (2d Dist.).

¶{19} Here, appellant states that he paid $153 per month for at least ten years. His inability to pay defense was mainly based upon his claim that his income is $9,000

per year. He has been claiming this since the divorce where the trial court found that he was under-reporting his income and paying living expenses out of the business. That is why his income was previously imputed at $36,000. The court could use discretion to find that the $36,000 imputed figure was still appropriate and that one making this amount with his living expenses is able to pay more than $153 per month.

¶{20} We also note that even if appellant really did only make $9,000 per year, the court could use its discretion to find that he should have found other employment to raise him to the $36,000 imputed figure. In other words, if he actually only makes $9,000 per year, then he needs to change his situation so that his monthly income increases. Someone with a large support arrearage and current spousal support should not be continuing to engage in a business that takes substantial amounts of time and provides him with merely $9,000 per year, especially after fifteen years of operating at the same low income or less.

¶{21} This analysis also responds to appellant's complaint that his living expenses take up most of his monthly income. That is, his living expenses would not take up most of his income if he made more than $9,000, which the court found that he was able to do or actually was doing when it imputed $36,000 in income to him.

¶{22} Although appellant receives no child support for his nine-year-old son who lives with him, his other living expenses have been fairly low. He has lived at the same place for years; he works right next to his home. His rent and utilities only total $350 per month. He has no credit card debt. His cell phone bills are paid by the business. He noted that he pays his adult children $10 or $20 here or there. This is money he could be sending to fulfill his obligations that exist from when they were minors.

¶{23} As for his reliance on decades old spinal surgeries, he did not claim that an injury prevents him from working besides saying that, at the time, it prevented him from driving truck; in fact, he works as a mechanic. Rather, he merely presented his opinion that an employer such as a bank would not hire him if they knew about his past surgeries as they would fear worker's compensation liability if he fell and reinjured his spine. This is mere conjecture that an employer such as this would have such a

secretive hiring motive. There is also no reason why this type of employer would even ask potential hires about prior car accident injuries.

¶{24} In conclusion, the trial court did not act unreasonably, arbitrarily or unconscionably in finding that appellant's inability to pay defense was not sufficiently established. The fact-finder was in the best position to judge appellant's credibility as to his income and his job prospects. Even assuming he established inability to pay $627 per month, the court could rationally find that he did not establish an inability to pay more than $153 per month. For all of the foregoing reasons, this assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

¶{25} Appellant's second assignment of error provides:

¶{26} "APPELLANT DID SUBSTANTIALLY COMPLY WITH THE COURT'S ORDER THROUGH MAKING MONTHLY PAYMENTS TO APPELLEE THUS PREVENTING A FINDING OF CONTEMPT."

¶{27} Substantial compliance with a court order can be a defense to a charge of contempt. See, e.g., *State ex rel. Curry v. Grand Valley Loc. Sch. Bd. of Edn.* (1980), 61 Ohio St.2d 314, 315, citing *State ex rel. Morganthaler v. Crites* (1891), 48 Ohio St. 460. Appellant testified that he has paid $153 per month for at least ten years. (Tr. 39). CSEA acknowledged that this has been his payment for over five years. Appellee agreed that appellant has paid $153 per month for a substantial period of time but could not say when the payments started, except to say that they did not begin at the time of divorce. (Tr. 18).

¶{28} We note that as a result of the 2001 contempt proceedings, appellant was ordered to pay $100 per month towards his arrearage. In 2003, the last child was emancipated and thus he was obligated to pay $248 per month in spousal support plus $100 per month toward his arrearage. In September of 2006, the court adopted CSEA's recommendation that appellant pay $347.34 per month (rather than $100 per month) toward his arrearage. Added to his current spousal support obligation, this resulted in a total monthly obligation of $627.65 per month. Appellant did not object to CSEA's notice, which was provided to him in May of 2006. Still, he continued to pay

only $153 per month. He finally filed a modification motion in September 2007 in response to a driver's license revocation.

¶{29} There is no error in finding that a payment of $153 per month does not constitute substantial compliance with these obligations. As such, the trial court's decision finding appellant in contempt is upheld.

ASSIGNMENT OF ERROR NUMBER THREE

¶{30} Appellant's third assignment of error states:

¶{31} "THE DECISION OF THE TRIAL COURT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE COURT APPLIED INCORRECT FINDINGS OF FACT IN MAKING ITS DECISIONS."

¶{32} Here, appellant takes issue with two statements in the trial court's judgment entry. After adopting the magistrate's decision and setting forth the law on the contempt defenses of inability to pay and substantial compliance, the court stated:

¶{33} "The Defendant/Joseph McCree has an extremely long history of failing to pay his child support and spousal support as ordered. In 2001, Defendant/Joseph McCree was previously found in contempt of court for failing to pay his spousal and child support based upon facts that are almost identical to those before this Court today. Defendant/Joseph McCree has for more than 15 years refused to obey the Court's Orders. Defendant/Joseph McCree has never filed a Motion to Modify his orders and has unilaterally decided what amount he would pay on his orders. Moreover, Defendant/Joseph McCree has chosen to engage in self-employment. Defendant/Joseph McCree has not substantially complied with this Court's Order. As a result of Defendant/Joseph McCree's conduct, the Plaintiff/Deborah McCree had to work three jobs to support herself and the parties' minor children. Clearly when the Court considers the amount of Defendant/Joseph McCree's spousal and child support arrearage, the hardship Plaintiff/Deborah McCree has suffered because of Defendant/Joseph McCree's willful refusal to pay his child and spousal support and the law, the Court can only come to one conclusion." (J.E. 2) (Emphasis added to two contested statements).

¶{34} As to the first underlined statement, appellant notes that the very issue before the court, besides CSEA's motion to have him held in contempt, was his motion

to modify his support obligation, which he filed one month prior to CSEA's motion. He believes that the court mistakenly thought that he had not filed a motion to modify.

¶{35} However, in the judgment portion of its entry, the court stated that appellant's September 10, 2007 motion to modify his support obligation was denied. Thus, the court was aware of the pending motion. Considering the court's adoption of the magistrate's decision (which further discussed the modification request), the context of the court's remark and the court's later statement denying his motion, it is apparent that the contested remark refers to appellant's failure to seek modification in the past.

¶{36} As to the second underlined statement, appellant notes that although appellee testified that she has worked at Giant Eagle for seventeen years, she only said that she has worked at Subway for the past four years, she did not say how long she has worked for the union, and the last child was emancipated five years prior. (Tr. 8-10). He urges that the testimony only showed that appellee worked one job while the children were minors.

¶{37} However, appellee subsequently testified that she has worked seventy to eighty hours for the past fifteen years in order to support her children. (Tr. 72). Moreover, the court can fairly state that her current need to work three jobs is due to appellant's lack of support, including during the time when the children were minors. Notably, she did testify that her current credit card bills contained expenses from when he was liable for child support.

¶{38} Lastly, we note that minor factual misstatements are not cause for reversal. See, e.g., *State v. Ahmed*, 103 Ohio St.3d 27, 2004-Ohio-4190, ¶113. As such, appellant's arguments in this assignment of error are without merit.

ASSIGNMENT OF ERROR NUMBER FOUR

¶{39} Appellant's fourth and final assignment of error urges:

¶{40} "THE DECISION OF THE MAGISTRATE AND SUBSEQUENT ADOPTION OF THE SAME BY THE TRIAL COURT DENYING APPELLANT'S MOTION TO MODIFY SUPPORT OBLIGATIONS CONSTITUTES AN ABUSE OF DISCRETION."

¶{41} Appellant's motion to modify his support obligation expressed that he did not make what had been imputed to him. In his objections to the magistrate's decision, he opined that he should not be ordered to pay more than $50 per month. (Obj. at 3). At the 2008 hearing, appellant's attorney asked for a recalculation of his obligations based upon his income and his other child. (Tr. 3, 6). Appellant was essentially seeking two avenues of relief: (1) a downward modification of his current spousal support; and (2) a downward modification of the monthly amount he was obligated to pay towards the arrearage.

¶{42} As to the modification of his current spousal support obligation, R.C. 3105.18(E) is applicable. This statute provides that spousal support can be modified if the court determines the circumstances of either party have changed and the decree contains a provision specifically authorizing the court to modify spousal support.

¶{43} We first address whether there was a sufficient reservation of jurisdiction here. *Kimble v. Kimble*, 97 Ohio St.3d 424, 2002-Ohio-6667, ¶9-10 (jurisdictional limitation for those whose decrees were entered after May 1986). A trial court only has the authority to modify or terminate spousal support if the divorce decree contains an express reservation of jurisdiction over spousal support. Id. at ¶10. Thus, we must review the language of the October 20, 1995 divorce decree, which incorporated a magistrate's decision.[1]

¶{44} This court has found that the phrase, "All until further order of this court," occurring only at the end of a judgment entry does not rise to the statutory level of specificity necessary to confer continuing jurisdiction in the trial court to modify spousal support. *Keck v. Keck* (Aug. 10, 2000), 7th Dist. No. 98CA247. Thus, the boilerplate language at the end of the 1995 divorce decree here is not sufficient to reserve jurisdiction.

¶{45} Where the aforementioned phrase is placed at the portion of the entry dealing specifically with spousal support, however, this court has found that the language is a sufficient reservation of jurisdiction. *Hiscox v. Hiscox*, 7th Dist. No.

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[1]This entry was used as the judgment on support pursuant to the trial court's October 17, 1997 judgment finding that our remand in *McCree v. McCree* (Jan. 13, 1997), 7th Dist. No. 95CA231 solely dealt with the grounds for divorce. We upheld the court's reinstatement of this portion of its October 20, 1995 decree in *McCree v. McCree* (Mar. 22, 2000), 7th Dist. No. 98CA129.

07CO07, 2008-Ohio-5209, ¶43. Here, there is terminology in the portion of the entry dealing specifically with spousal support that equates with a reservation of jurisdiction over spousal support. That is, although the entry was a final divorce decree, the trial court termed the spousal support as temporary.

¶{46} A spousal support award characterized as temporary equates with a statement that spousal support shall continue "until further order of the court". See id. at ¶43 ("until further order of the court" is sufficient reservation of jurisdiction where such phrase refers to spousal support order). Consequently, where a court sets no time limit on the duration of the spousal support award and terms the award "temporary," this is an expression that the court is reserving jurisdiction over spousal support.

¶{47} Thus, we proceed to address whether appellant demonstrated sufficient changed circumstances to support his modification request. The Supreme Court has recently clarified that the changed circumstances for a modification of spousal support must be substantial and must not have been contemplated at the time of the original decree. *Mandelbaum v. Mandelbaum*, __ Ohio St.3d __ , 2009-Ohio-1222. The decision on a motion to modify spousal support is reviewed for an abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218. We should not substitute our judgment for that of the trial court. Id. at 219. However, if a decision is unreasonable, arbitrary or unconscionable, it must be reversed as an abuse of discretion. Id. We conclude that the court's decision refusing to modify appellant's spousal support obligation was unreasonable.

¶{48} As for appellant's claims regarding his income, $36,000 was imputed as his annual income at the time of the divorce. In the present case, appellant claimed that $9,000 per year was the proper figure for his income. He argued similarly in the original divorce trial. The trial court disagreed with his claim, finding that he does or should make more than this. The original $36,000 imputed figure for his income was thus not changed. As aforementioned, these are rational determinations mainly based upon credibility. Hence, we agree that appellant's income is not a substantial changed circumstance.

¶{49} However, with the same imputed income since the divorce, appellant has gained another child; whereas appellee has had her three children emancipated. Appellant's child is nine years old. The child lives with appellant full-time. This is generally considered a major time-utilizer and expense.

¶{50} Appellant testified that he must pay for food for the child, including $2 per day for school lunches. He has no medical insurance for the child, besides a mere school accident policy covering only hospitalization for which he must pay a $180 annual premium. Appellant must pay nearly $500 per month for daycare in the summer months. He has no cable television and has relied on his sister to help purchase the child's clothing.

¶{51} Moreover, although appellant is the sole custodian of a child, he receives no child support for the child. In addition, the child's mother is not otherwise providing any funding or even involved in the child's raising.

¶{52} A change in living expenses and medical expenses are specific statutory examples of changed circumstances. See R.C. 3105.18(F) ("a change in the circumstance of a party includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses). The addition of a child to a household for which no support is received falls within the increased living expenses example, and the addition of a child with no medical insurance, besides a $180 annual school accident policy, would fall within the medical expenses example. Notably, the listed events are mere examples, and the addition of child to a household would often represent its own example of a sufficient changed circumstance, especially considering the totality of the facts and circumstances existing in this case. See id.

¶{53} We also point out that the divorce was filed after fifteen years of marriage, and temporary spousal support began accruing within the year. Thus, since the time of appellant's 2007 modification motion, spousal support had been payable for at least fourteen years. Appellee was only in her mid-thirties at the time she filed for divorce, and when appellant's spousal support obligation began.

¶{54} At the time of the divorce, the parties had three minor children, and appellee was the residential parent. Now, none of the parties' joint children are

minors; the last one was emancipated in 2003. That the parties' thirty-year-old daughter and twenty-three-year old son continue to live with appellee cannot be attributed to her household needs and obligations in the way that appellant raising his nine-year-old son must be attributed to his household needs and obligations.

¶{55} Next, we note that contrary to suggestion, the fact that there remains an arrearage is not a justification for continued current spousal support or for a refusal to initiate a downward modification of current spousal support where there exist substantial changed circumstances. The maintenance of spousal support payments is not a punishment for the failure to fully pay in the past. The arrearage payments and contempt are meant to deal with that matter. Finally, there is no contention that appellant's custody of another child was contemplated at the time of the 1995 divorce decree.

¶{56} For all of these reasons, we find that it was unreasonable to refuse to modify appellant's spousal support obligation. Substantial changed circumstances existed to require a downward modification of his obligation. Thus, we reverse and remand for a redetermination of appellant's current spousal support obligation, if any. See *Kimble*, 97 Ohio St.3d 424 at ¶7 (termination falls within modification).

¶{57} Finally, we move to appellant's claim that the monthly amount he was obligated to pay toward his arrearage should have been decreased due to his inability to pay the $367.34 per month ordered in 2006, which was an increase from $100 per month toward the arrearage. Instead of granting his request for a downward modification of this monthly obligation, the court added an extra $50 per month[2], for a total of $417.34 per month toward his arrearage. The issue thus would be whether, applying the $36,000 figure previously imputed to him, the monthly obligation toward the arrearage is too extreme under all of the circumstances existing in this case.

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[2]It seems the trial court was under the impression that its purge order must impose more towards the arrearage than the last order. However, the rule prohibiting a mere attempt to regulate future support payments (for which the obligor is already obligated) deals with the situation where there is no purge opportunity as the court holds the contempt sanction over an obligor's head indefinitely. See *McCree*, 7th Dist. No. 01CA228 at ¶30 (allows purging opportunity if he can pay toward past arrearage over four-month period). The purging condition need not add a new and permanent monthly payment toward the arrearage, especially where there was already a large monthly arrearage obligation, which the obligor was seeking to modify.

¶{58} However, because we are reversing and remanding on the issue of current spousal support, the totality of the circumstances are not yet established. The reasonableness of a monthly arrearage obligation is dependent upon the amount and existence of the current support obligation. Thus, we must also remand the issue of the monthly amount payable toward the arrearage for reconsideration in light of this decision and in light of the trial court's new order which shall decrease or terminate current spousal support.

CONCLUSION

¶{59} For all the foregoing reasons, the trial court's finding of contempt is upheld. The trial court's refusal to modify appellant's current spousal support obligation by decrease or termination is reversed and remanded as there existed substantial changed circumstances. The new figure on remand will necessitate a reconsideration of the monthly amount that appellant is required to pay toward his arrearage, and thus, the court's decision on that matter is reversed and remanded as well.

Waite, J., concurs.
DeGenaro, J., concurs.