

STATE OF OHIO, JEFFERSON COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

CHARLES MOLNAR,	)	
	)	CASE NO. 09 JE 12
PLAINTIFF-APPELLANT,	)	
	)	
- VS. -	)	OPINION
	)	
KAREN SUE MOLNAR,	)	
	)	
DEFENDANT-APPELLEE.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court,  
Case No. 08DR37.

JUDGMENT: Reversed and Remanded.

APPEARANCES:  
For Plaintiff-Appellant:

Attorney Jane Hanlin  
300 Sinclair Building  
P.O. Box 1506  
Steubenville, Ohio 43952

For Defendant-Appellee:

Attorney Steven Stickles  
Suite 10, 500 Market Street  
Steubenville, Ohio 43952

JUDGES:  
Hon. Joseph J. Vukovich  
Hon. Gene Donofrio  
Hon. Mary DeGenaro

Dated: December 10, 2009

VUKOVICH, P.J.

¶{1} Plaintiff-appellant Charles Molnar appeals the decision of the Jefferson County Common Pleas Court which denied his motion to modify spousal support. The issue on appeal is whether he established a substantial change of circumstances. He contends that the trial court misconstrued its prior calculation of his net income as gross income when finding that his current income was nearly the same as the income at the time of the divorce hearing. For the following reasons, the judgment of the trial court is reversed and this case is remanded.

#### STATEMENT OF THE CASE

¶{2} The parties were married in 1977. They had a daughter in 1991 and a son in 1993. In February 2008, Mr. Molnar filed for divorce. The parties agreed that Mr. Molnar would be named the residential parent of the son, Mrs. Molnar would be named the residential parent of the daughter, and Mr. Molnar would pay \$389.94 per month in child support.

¶{3} On November 24, 2008, trial proceeded on the remaining issues. The record establishes how the trial court arrived at Mr. Molnar's average monthly income. The court noted that it heard testimony regarding Mr. Molnar's gross annual income of \$49,000 per year. (Tr. 32, 70). The court then asked Mrs. Molnar how much Mr. Molnar "brings home" to which she responded that last week's pay was \$791 and on the average his "take home" pay is \$650 per week. Mrs. Molnar then agreed with the court's query as to whether Mr. Molnar's monthly income was represented by multiplying 4.333 (weeks in a month) by his average take home pay of \$650 per week for a total of \$2,816.45 per month. (Tr. 71).

¶{4} On December 12, 2008, the court issued a judgment entry containing findings of fact and conclusions of law. This information was also consolidated into the court's January 21, 2009 divorce decree. The trial court stated that Mr. Molnar's income was \$2,816.45 per month. The court imputed a minimum wage of \$1,232.50 per month as income to Mrs. Molnar.

¶{5} The court then ordered Mr. Molnar to pay \$556.04 in spousal support. The court began calculating this by subtracting living expenses from income. The

court then provided \$283.64 to Mrs. Molnar for a shortfall and added \$272.41 in order to equalize the parties' income so they would both have approximately \$272 left over at the end of each month.

¶{6} The court also held that when the daughter graduates from high school in 2010, Mr. Molnar's spousal support obligation will increase to \$750 per month and continue until December 2015. The court retained jurisdiction to modify spousal support.

¶{7} On February 9, 2009, Mr. Molnar filed a motion to modify his spousal support obligation on the basis of an involuntary reduction in hours including an elimination of overtime. Mr. Molnar also pointed to increased living expenses due to the fact that he was awarded a pole building, which sits on the marital property but which is cost-prohibitive (\$7,000) to move. Mr. Molnar also mentioned that he recently had to pay two medical bills for his son that predated the divorce.

¶{8} A hearing was held on March 2, 2009. Mr. Molnar testified that his employer of sixteen years had filed for Chapter 11 bankruptcy due to the recession and the lack of work orders. Many employees had been laid off. He testified that he no longer worked overtime and that since December 2008, he was only paid for 40 hours, which netted him \$410 per weekly pay or \$1,640 per month. He was scheduled only seven to eight hours some weeks in December, but he used vacation time to avoid having to collect unemployment benefits. (Tr. 8, 13).

¶{9} Mrs. Molnar testified that Mr. Molnar's overtime was always cut in the winter. It was pointed out that as of the end of February 2009, his year-to-date gross was \$5,891.61, which equaled \$2,945.81 gross per month. (Tr. 35, 51). It was established that at the end of February 2008, his year-to-date gross was \$6,725.81.

¶{10} The trial court stated on the record that Mr. Molnar's gross income had not changed. In doing so, the court expressed its belief that the \$2,816.45 per month figure it previously ascribed to Mr. Molnar in the divorce decree was gross rather than net income, noting that the figure it had imputed to Mrs. Molnar for full-time minimum wage would have been a gross amount. (Tr. 80-82). The court thus insisted upon using this \$2,816.45 figure as Mr. Molnar's prior *gross* income, pointing to the fact that no party had appealed the divorce decree.

¶{11} On March 4, 2009, the court issued a judgment entry finding that Mr. Molnar merely anticipated a reduction in his income and that his income had not significantly changed since the November 24, 2008 divorce hearing. The court thus denied Mr. Molnar's modification motion. Mr. Molnar filed timely notice of appeal.

#### GENERAL LAW

¶{12} If a trial court reserved jurisdiction over spousal support, then a spousal support order can be modified upon a change in the circumstances of either party. R.C. 3105.18(E)(1). A change in the circumstances of a party includes, but is not limited to, any increase or involuntary decrease in a party's wages, salary, bonuses, living expenses, or medical expenses. R.C. 3105.18(F). The Supreme Court has interpreted this to mean that the changed circumstances must be substantial and must not have been contemplated at the time of the prior decree. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222.

¶{13} The decision on a modification motion is reviewed for an abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218. We do not substitute our judgment for that of the trial court, but if a decision is unreasonable, unconscionable, or arbitrary, it must be reversed as an abuse of discretion. See *id.* at 219. See, also, *McCree v. McCree*, 7th Dist. No. 08MA109, 2009-Ohio-2639, ¶48-54 (reversing where the trial court found no substantial changed circumstances even though the former husband now had his nine-year old child living with him with no assistance from the child's mother).

#### ARGUMENT

¶{14} Appellant generally argues that the trial court erred and abused its discretion in finding there was not a sufficient change of circumstances. Specifically, he contends that the court incorrectly stated that his income reduction was anticipated as opposed to actual. He urges that he established that his *net* income at the time of the divorce hearing was \$2,816.45 per month but his net income at the time of the modification hearing had been reduced to \$1,640.44 per month. He contests the propriety of the trial court's statement that it previously found that \$2,816.45 was the amount of his *gross* monthly income.

¶{15} Appellant mentions that it will cost \$7,000 to move his pole building and that he needs to do this or find another place to live. He also notes that he incurred unexpected medical bills for his son, which arose from treatment prior to the divorce.

#### ANALYSIS

¶{16} Any contentions about the need to find a place to live are not the proper subject of this motion as appellant testified at the divorce hearing that he was not planning to live in the pole building but was merely going to use it as storage. He was also never ordered to relocate the building, which was awarded to him as separate property notwithstanding the fact that it sits on marital property, which property was awarded to appellee and which distribution was not appealed. Moreover, the fact that appellant recently paid \$400 in medical bills that were incurred by his son *prior to the divorce* does not warrant a spousal support modification. This is not a large amount, and there is no indication that more bills exist. In any event, the real issue here revolves around appellant's contention that his income has decreased.

¶{17} First, we note that appellant is using \$1,640.44 per month as the figure to compare to the \$2,816.45 figure set forth in the divorce decree. However, this figure does not take into account his quarterly safety bonus, which would add approximately \$87 to his monthly net.

¶{18} Moreover, the court's prior figure was based upon an average weekly net of \$650. The court multiplied this figure by 4.333 to receive the monthly average net of \$2,816.45. Appellant, on the other hand, is multiplying his weekly wage by only 4 to arrive at \$1,640, rather than by 4.333 (the average amount of weeks in a month). This is significant because \$410 multiplied by 4.333 is \$1,776. Thus, with the bonus, we are now over \$1,800 per month.

¶{19} This is still significantly lower than \$2,816. However, there is also the principle of the average wage, not the actual wage earned at any one time. If we break it down into the weekly pay, appellant's modification motion relied upon the fact that his first six pays of 2009 only netted \$410.12 and the next three netted \$421.91. Comparing a \$650 net to a \$410 net may seem to be a large decrease. However, as appellee's counsel argued below, the modification motion may be premature under the

circumstances of the case as it was too early to discern what the figures would do to the *average wage*.

¶{20} In other words, since appellant's income was calculated on the average, a comparison of the average monthly net to the monthly net for a small part of the year may not be representative. In fact, appellee testified that appellant's overtime was always decreased in the winter and that a \$400 net pay was not unusual during those times. (03/02/09 Tr. 56-57). There was also testimony that appellant brought home \$791 in the weekly pay just prior to the divorce hearing. Thus, the court was faced with the issue of whether a few weeks netting between \$410 and \$421 per week could still average out to near \$2,816 per month if overtime begins again.

¶{21} Still, it was established that appellant's gross for the first two months in 2009 was \$834 less than his gross income for this same period in 2008. Thus, he is actually grossing \$417 less per month in the same two winter months as last year. Considering the state of Mr. Molnar's employer, it could also be reasonable to find that he will not be working overtime in the near future.

¶{22} We also note that appellant talks about his regular hours being cut as well in December, which required him to take vacation to keep his pay at forty hours. However, appellee testified that he always used vacation in such a manner in December. (11/24/08 Tr. 68). Moreover, his scheduled hours were brought back up to forty in January and a company letter seemed to assure that hours would not be cut further during the bankruptcy as the layoffs that appellant avoided were over during reorganization.

¶{23} Although many of these items are factual issues best left to the trial court's discretion, we have an additional problem here that requires reversal. That is, the trial court incorrectly assumed that the \$2,816.45 per month figure in the divorce decree represented appellant's gross income.

¶{24} Merely because the minimum wage imputed to Mrs. Molnar appeared to be based on imputed gross income does not mean that Mr. Molnar should have appealed from the divorce decree when the trial court used his net but her gross. Someone making less than \$15,000 with a child may not end up paying much income

tax due to earned income credit and the like. Moreover, that would be something for her to appeal, not him.

¶{25} The record from the divorce hearing shows that the court based its previous \$2,816 figure on Mr. Molnar's *net* income as confirmed by Mrs. Molnar's testimony. Thus, the trial court mistakenly interpreted its prior entry as being a statement of monthly gross income.

¶{26} For the foregoing reasons, since the trial court's decision seems to be based upon this mistake, we reverse and remand this case for further consideration with instructions to use \$2,816.45 as appellant's monthly *net* income at the time of the divorce. Considering the time that has passed and the more accurate picture that can now be gained regarding Mr. Molnar's average monthly pay, the remand shall include a new modification hearing.

Donofrio, J., concurs.

DeGenaro, J., concurs.