

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SANDRA L. TUFTS

C. A. No. 24871

Appellee

v.

FREDERICK N. TUFTS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 1994-03-0675

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 24, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Frederick N. Tufts (“Husband”), appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, denying his motion to terminate spousal support being paid to Plaintiff-Appellee, Sandra L. Tufts (“Wife”). This Court reverses.

I

{¶2} In March 1995, Husband and Wife divorced after 35 years of marriage. Under the terms of their agreed Judgment Entry of Divorce, Husband was required to pay Wife \$2,500 per month in spousal support. The parties’ agreement also specified that the trial court retained jurisdiction to modify the amount of spousal support based on a change in circumstances. At the time of the divorce, Husband’s salary was \$107,000, but based on sizeable bonuses he received, his annual income was in excess of \$240,000 in the year of their divorce.

{¶3} In January 2000, Husband filed a motion to modify spousal support based on a significant decrease in his income following the loss of his position and ownership interest with his long-time employer. As a result of those events, his income dropped to approximately \$64,000. Consequently, the trial court reduced Wife’s spousal support award from \$2,500 per month to \$1,600 per month.

{¶4} In May 2008, Husband filed a motion to terminate, or in the alternative, reduce, his spousal support payment based on his retirement and corresponding decrease in income to approximately \$48,000. The magistrate held a hearing at which both parties were present and testified. Following the hearing, the magistrate denied Husband’s motion. Husband timely objected to the magistrate’s findings, and Wife filed a response to Husband’s objections. The trial court overruled Husband’s objections and adopted the magistrate’s findings denying Husband’s motion.

{¶5} Husband has timely appealed, asserting four assignments of error for our review. For ease of analysis, we combine Husband’s assignments of error.

II

Assignment of Error Number One

“THE TRIAL COURT HAS JURISDICTION TO TERMINATE. MODIFY FRED TUFTS OBLIGATION TO PAY SPOUSAL SUPPRT AND HIS RETIREMENT TRIGGERS A REVIEW OF THE ORDER.” (Sic.)

Assignment of Error Number Two

“THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO TO TERMINATE OR AT LEAST DOWNWARD MODIFY APPELLANT/DEFENDANT’S SPOUSAL SUPPORT OBLIGATION UPON HIS RETIREMENT AND FAILING TO PROPERLY CONSIDER ALL THE FACTORS ENUMERATED IN R.C. 3105.18(C) WITH ANY SPECIFICITY AND INSTEADRELYING ON THE BASIS THAT IT WAS A MATTER OF EQUITY[.]” (Sic.)

Assignment of Error Number Three

“THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO TERMINATE OR TO MODIFY SPOUSAL SUPPORT AND BY FAILING TO ISSUE AN ANALYSIS IN SUFFICIENT DETAIL TO ENABLE ONE TO DETERMINE THAT THE AWARD IS FAIR, JUST, EQUITABLE AND IN ACCORDANCE WITH LAW.”

Assignment of Error Number Four

“THE TRIAL COURT MADE CRITICAL FACTUAL ERRORS AS IT RELATES TO APPELLANT/DEFENDANT’S INCOME, THE BASIS FOR THE ORIGINAL SUPPORT ORDER AND THEREBY ABUSING ITS DISCRETION[.]”(Sic.)

{¶6} In his assignments of error, Husband asserts that the trial court erred in denying his motion to terminate or reduce spousal support because it: (1) failed to analyze the statutory factors set forth in R.C. 3105.18, governing the calculation of spousal support, when it determined that he was not entitled to terminate or reduce his spousal support payments to Wife; (2) failed to sufficiently explain its rationale for denying his motion and relied solely on equitable principles in doing so; (3) inaccurately stated his annual income for the past four years; and (4) erroneously considered the amount he had paid for spousal support in previous years when determining the amount he could afford to continue paying after he retired.

{¶7} This Court reviews a trial court’s action with respect to a magistrate’s decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. “In so doing, we consider the trial court’s action with reference to the nature of the underlying matter.” *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. A trial court’s decision regarding spousal support will not be reversed on appeal absent an abuse of discretion. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 130-31. An abuse of discretion “connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶8} It is well established that R.C. 3105.18 requires a two-step analysis before an award of spousal support may be modified. *Malizia v. Malizia*, 9th Dist. No. 22565, 2005-Ohio-5186, at ¶8, citing *Leighner v. Leighner* (1986), 33 Ohio App.3d 214, 215. The first step is jurisdictional and requires the trial court to determine whether the original divorce decree provided continuing jurisdiction to modify the spousal support award, and if so, whether the circumstances of either party have changed. *Malizia* at ¶8. See, also, R.C. 3105.18(E). With respect to this jurisdictional hurdle, the Ohio Supreme Court has clarified that “[a] trial court lacks jurisdiction to modify a prior order of spousal support unless the decree of the court expressly reserved jurisdiction to make the modification and unless the court finds (1) that a *substantial* change in circumstances has occurred and (2) that the change was not contemplated at the time of the original decree.” (Emphasis added.) *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, at paragraph two of the syllabus. Once jurisdiction is established, the second step of the analysis requires the trial court to determine whether the existing support order should be modified in light of the change in circumstances that has occurred. *Johnson v. Johnson*, 9th Dist. No. 24159, 2008-Ohio-4557, at ¶7. Such a determination is conducted in consideration of the factors set forth in R.C. 3105.18(C). *Id.*

{¶9} Recently, this Court considered the implications of *Mandelbaum* when deciding appeals related to spousal support modification. *Johns v. Johns*, 9th Dist. No. 24704, 2009-Ohio-5798, at ¶6-11. In doing so, we noted that “we are bound by the Supreme Court’s precedent which abrogated our holding in *Kingsolver* [reasoning that any change in circumstance could warrant a modification to spousal support] and concluded that in order to modify spousal support a trial court must have continuing jurisdiction and must find ‘(1) that a substantial change in circumstances has occurred and (2) that the change was not contemplated at the time

of the original decree.” *Johns* at ¶8, quoting *Mandelbaum* at ¶33. In doing so, we held that, “because the trial court’s entry d[id] not include these findings, *** the trial court erred in modifying the spousal support award[.]” *Id.* at ¶10.

{¶10} In this case, the magistrate’s decision was issued on December 5, 2008, months in advance of the Supreme Court’s *Mandelbaum* decision in March 2009. Appropriately so, the magistrate’s decision relied on this Court’s holdings in *Kingsolver v. Kingsolver*, 9th Dist. No. 21773, 2004-Ohio-3844, and *Zahn v. Zahn*, 9th Dist. No. 21541, 2003-Ohio-6124, to support its conclusion that a change in circumstances had occurred based on Husband’s retirement. Husband timely filed objections to the magistrate’s decision, and Wife responded accordingly. The trial court, however, did not enter judgment on Husband’s objections until July 2009, nearly four months after the Supreme Court’s decision in *Mandelbaum*.

{¶11} Upon review of the trial court’s July 2009 entry, it is apparent that the trial court did not make the requisite findings under *Mandelbaum* because it did not recount whether there was a substantial change in circumstances and that the change was not contemplated by the parties at the time of the divorce. *Mandelbaum* at paragraph two of the syllabus; *Johns* at ¶9-10. Given that the trial court failed to make such findings to properly establish jurisdiction over this matter, it further erred in proceeding to the second step of the analysis where it determined whether the existing support order should be terminated or reduced. *Mandelbaum v. Mandelbaum*, 2d Dist. No. 21817, 2007-Ohio-6138, at ¶95 (concluding that a court may only proceed to the second step in the spousal support modification analysis once it has satisfied the first).

{¶12} Pursuant to the Supreme Court’s holding in *Mandelbaum* and this Court’s application of *Mandelbaum* in *Johns*, this matter must be remanded to the trial court for a

determination of whether there was a substantial change in circumstances and whether the change was contemplated by the parties at the time of their divorce. *Mandelbaum* at paragraph two of the syllabus; *Johns* at ¶9-10.

III

{¶13} Having concluded that the trial court erred by not making the requisite findings to establish jurisdiction over Husband's motion to terminate or reduce spousal support, the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is reversed, and the matter is remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

STEPHEN E. S. DARAY, Attorney at Law, for Appellant.

LESLIE S. GRASKE, Attorney at Law, for Appellee.