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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of NANCY H. and KERRI
A. GALGAS.

2d Civil No. B234394
(Super. Ct. No. SD029638)
(Ventura County)

NANCY H. GALGAS,

Respondent,

v.

KERRI A. GALGAS,

Appellant.

Kerri Galgas appeals the denial of her motion to modify an order requiring her to pay child and spousal support to her former spouse Nancy.¹ Kerri contends the denial of her motion amounts to an abuse of discretion. We affirm.

FACTS AND PROCEDURAL HISTORY

The parties were married in 1981. Kerri filed a petition for dissolution on October 9, 2003. The couple has two adult children, Tyler, born in 1991, and Andrew, born in 1993. On December 8, 2008, the court issued an order requiring Kerri to pay

¹ "As is customary in family law cases, we refer to the parties by their first names for purposes of clarity and not out of disrespect. [Citations.]" (*Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 828, fn. 2.) Kerri, formerly Gary, underwent gender reassignment surgery after the petition for dissolution of the marriage was filed.

Nancy a total of \$2,185 per month in child support and \$1,705 in spousal support. The ruling was based on a finding that Kerri was earning \$10,740 a month through her employment at Atlas Development Corporation (Atlas). Kerri was also ordered to provide health insurance for Nancy and the children through Kerri's employer-provided health plan.

On April 1, 2009, Kerri sought modification of the child and spousal support order. The court issued its ruling on November 2, 2010, the substance of which is discussed more fully below.

On September 20, 2010, Kerri filed another motion for modification of the child and spousal support order and also sought termination of the requirement that she continue to provide health insurance for Nancy and the children. In her income and expense declaration, Kerri stated that her employment at Atlas had been terminated on September 15, 2010, and claimed that her total current income consisted of approximately \$1,950 a month in unemployment benefits. In reporting her cash, savings, stocks and bonds, and other real and personal property, Kerri did not offer any specific dollar figures. Instead, she merely stated that the amounts of these assets were "nominal." The only debts alleged were a \$1,504 monthly payment on a loan for her Lotus vehicle and a \$133 monthly payment on a loan for a vehicle she had purchased for Tyler.

In opposing the September 2010 modification motion, Nancy demonstrated inconsistencies with regard to Kerri's reporting of her financial condition in prior income and expense declarations. For example, in a declaration filed only nine months earlier, Kerri had identified \$125,000 in real and personal property. She had also referred to a Yukon automobile for which only one payment owed as of June 2010. Nancy further noted that Kerri had yet to disclose that she owned a 1990 Ferrari valued at approximately \$37,000.

On November 2, 2010, the court issued its order with regard to Kerri's April 2009 modification motion. The court ordered Kerri to pay various amounts of child and spousal support during different time periods from April 1, 2009, until June 29, 2010. As

of February 16, 2010, Kerri was required to pay monthly child support in the amount of \$591. Commencing on July 1, 2010, Kerri was to pay \$2,200 a month in spousal support, to be reduced to \$2,000 a month beginning February 1, 2011. In issuing its order, the court noted that "some of the orders contained herein may eventually be modified later as a result of Kerri's pending motion filed on September 20, 2010."

On December 15, Kerri filed an income and expense declaration in which she alleged that her total current monthly employment consisted of \$1,800 in unemployment benefits. Her average monthly employment for the past 12 months was listed as \$7,858, while assets were once again identified as merely "nominal."

The hearing on Kerri's September 2010 modification motion was held on December 20, 2010. At that hearing, Kerri claimed to have credit card debt and additional loans that were not reflected on her income and expense declarations. No supporting documentary evidence was offered. Kerri also acknowledged for the first time that she had \$10,000 in cash left from the sale of her residence. She did not believe, however, that she had to report this asset because it was offset by her unreported (and unsubstantiated) credit card debt. Under questioning by the court, she also acknowledged for the first time that she had received approximately \$24,000 in vacation pay in September and an additional \$5,800 in vacation pay in October. Kerri subsequently stated that she had received \$17,000 in vacation pay when her employment was terminated on September 15. When asked whether she had reported this in the income and expense declaration she signed on September 17, she claimed she had not done so because "it says for the previous month, not for the current month. Right?" She also initially claimed she could not recall how much money she had received from her employer in November. When pressed by the court, she admitted being paid approximately \$10,000.

When asked whether she had reported any of her additional pay in her December 15 income and expense declaration, Kerri claimed it was included in her reported monthly average income of \$7,858, which she characterized as "an average

monthly [*sic*] over the 85 months that this divorce has been going on." She further claimed she had been using the vacation pay for her current living expenses.

At the conclusion of the hearing, the court stated: "[T]here's no doubt in my mind that Kerri is receiving Unemployment in the amount of [\$]450 a week. Notwithstanding, based on the testimony that she's given, she's received at least as much, if not more income than the income upon which the existing orders were based. I don't think she's met her burden of proving the change in circumstances at this point in time that's required by law in order to grant a modification of support on a threshold issue. The Court finds there's no change of circumstances and denies the motion for [modification of] spousal and child support as well as a change to the medical payments. [¶] My hope is that before the filing or commensurate with the filing of the next motion, which I'm assuming will be coming in at some point, adequate disclosure will be made to counsel on the entirety of [Kerri's] income at the time of the filing of the motion." Her income and expense declaration reported a current monthly income of \$1,961 in unemployment benefits and 12-month average monthly income of \$4,773 from Atlas. She separately reported an average monthly income of \$2,960, which she identified as "[s]eparation payments received from former employer, ended 2-28-11[.]" In support of her motion, Kerri submitted a declaration acknowledging for the first time that on October 15, 2010, she and Atlas had executed a separation agreement pursuant to which she had been paid her full monthly salary for an additional six months. Kerri also stated that her unemployment benefits were exhausted on March 27, 2011, and that she "remain[ed] uncertain as to whether [she] will qualify for a Federal unemployment extension." She also stated that she had been making COBRA insurance payments of \$1,600 a month since October 1, 2010. She further claimed that she had "been looking diligently for re-employment" since her termination and had "sent out literally hundreds of applications, received numerous telephone interviews and several in person interviews all to no avail." She was also "informed and believe[d]" that Nancy was presently earning \$90,000 a year and stated "[t]hat since the tables have now turned, I would ask

[that] a spousal support award at least commensurate with the award given [Nancy] . . . be awarded to me."

In opposing Kerri's motion, Nancy once again pointed out the inconsistencies in Kerri's financial disclosures. Nancy further noted Kerri's prior failure to disclose her lucrative severance package, and offered that "[Kerri's] liquid assets and estate seem to increase (and disappear) depending upon the exigencies of the next court appearance." Nancy also faulted Kerri for failing to disclose that as of the preceding January she had been employed by World Financial Group (WFG). In support of the latter claim, Nancy submitted copies of Kerri's personal profile on LinkedIn, a professional networking site, as well as WFG's own page on LinkedIn, both of which identify Kerri as a WFG "independent contractor-associate." Kerri did not file a reply.

At the hearing on Kerri's modification motion, her attorney made an offer of proof that Kerri had yet to earn any income in her capacity as an independent contractor at WFG and that the LinkedIn listing "is simply a place to hang her license in the hopes she would earn income." Counsel also offered that Kerri would testify she had made "thousands of inquiries" and "had maybe a couple of hundred interviews either telephonically or in person, none of which have generated a job." Counsel stated that Kerri's sole income consisted of unemployment and argued that "[c]learly there is a change of circumstances."

The court responded: "When you say 'clearly there is a change in circumstances,' that's assuming you believe everything she says, and I have very little reason to believe what she says except by way of things that can be documented based on the history of this case and the information at the last hearing. That's what I do every day is assess the credibility of parties, and whatever testimony I find credible, that's what I assume to be facts." Counsel replied, "She did testify at the last hearing that she was receiving the separation payments. She testified truthfully then. . . . [¶] If I'm understanding what the Court is saying is that, based on the fact that you have some question as to the veracity of the witness back in December, she can never satisfy you that she's lost her job."

The court stated, "I don't think that that's the issue, that I would never believe her. I would believe her if there is some documentation of that." Kerri's attorney responded, "Well, I have the [separation] agreement. . . . It says it can't be disclosed by her without the consent of the employer or order of the Court. If the Court orders me to disclose it, I'll do it. . . . I would be glad to recite the language." Counsel proceeded to read the confidentiality clause of the separation agreement, which prohibits disclosure to anyone other than, inter alia, "any spouse of Ms. Galgas." Nancy's attorney interjected, "The agreement as he read it does not forbid disclosure to a spouse" and the court added, "It's right there." After Kerri's counsel stated that Nancy was her "[f]ormer spouse," Nancy's attorney pointed out that the marriage had yet to be dissolved.

The court proceeded to find that no change of circumstances had been shown, and accordingly denied Kerri's motion. The court added, "Someday he'll learn not to play games." After Kerri's attorney corrected the court's error, the court stated, "*She'll* learn not to play games in this court." (Italics added.)

DISCUSSION

Kerri contends the court erred in denying her motion to modify the child and spousal support order because the evidence irrefutably demonstrates that her monthly income had dropped from approximately \$11,000 to \$1,950 in unemployment benefits. She further asserts that the court acted with "prejudice and animus" in denying the motion. We conclude otherwise.

A party seeking modification of a child or spousal support order must present evidence of changed circumstances. (*In re Marriage of Brinkman* (2003) 111 Cal.App.4th 1281, 1287–1288.) We review the trial court's ruling on modification of support orders for abuse of discretion. (*In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, 472.) To prevail, the appealing party must demonstrate that the trial court's order was arbitrary, capricious, whimsical, and outside the bounds of reason. (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448-1449.) We defer to the court's credibility determinations. (*In re Marriage of Greenberg* (2011) 194 Cal.App.4th 1095, 1099.)

The court did not abuse its discretion in denying Kerri's motion for modification of the child and spousal support order that is currently in effect. In arguing to the contrary, Kerri fails to appreciate that her evidence and offers of proof, even if accepted as true, do not demonstrate a material change of circumstances with regard to her finances as of the date she filed her modification request. The support orders she sought to modify are based on a monthly salary of \$10,740. According to Kerri's own representations, she continued to receive her monthly salary from Atlas for an additional six months following the date of her termination on September 15, 2010. During that period, she also received approximately \$1,900 a month in unemployment benefits and at least \$32,800 in additional pay from her former employer. Even assuming that Kerri did not thereafter continue to receive unemployment benefits or immediately obtain comparable employment, the money she had received in addition to her regular compensation was sufficient to replace several months of her former salary.²

Kerri also fails to appreciate that the court's denial of her motion is based on a credibility finding we have no authority to disregard. In testifying at the hearing on her prior motion, Kerri gave answers demonstrating that she had been less than forthcoming in her disclosures regarding the income she had received from Atlas after her termination. For the first time at the hearing, Nancy and the court learned that Kerri had received additional payments that totaled approximately three months of her prior monthly salary. Then, in bringing the instant motion, Kerri revealed for the first time that she had also received an additional six months of pay. Her proffered justification for failing to disclose this information when she testified at the hearing in support of her

² Kerri received approximately \$11,400 in unemployment benefits (\$1,900 x 6), plus at least \$32,800 in additional compensation from Atlas, for a total of \$44,200. This amounts to more than four months of her former salary (\$10,740 x 4 = \$42,960). Although Kerri now pays \$1,593 a month in COBRA insurance payments, her June 2010 income and expense declaration states that she was paying \$1,033 in monthly premiums during her employment. Moreover, the \$560 monthly difference is offset by the elimination or reduction of other claimed monthly expenses. For example, Kerri previously claimed a monthly mortgage payment of \$4,045, while the declaration filed in conjunction with her modification motion states that her current monthly mortgage payment has been reduced to \$3,040. The June 2010 declaration also refers to a \$559 monthly payment on a car loan that has since been paid off.

prior modification request was that the terms of the agreement under which the payments were made were confidential. It was then revealed that Kerri was not prohibited from disclosing the information to Nancy, to whom she owes a continuing fiduciary obligation and duty of disclosure. Nancy further demonstrated that the financial disclosures that *were* made were inconsistent and contradictory in several respects. The court, which also had the opportunity to view Kerri's demeanor on the stand, ultimately found that it could not take her word for anything. This credibility finding is unassailable on appeal. (*In re Marriage of Greenberg, supra*, 194 Cal.App.4th at p. 1099.) Because Kerri offered no documentary evidence to support her factual representations with regard to her finances, the termination of her employment, and her efforts to obtain new employment, the court was effectively left with nothing upon which to make a finding of changed circumstances. The court's denial of Kerri's modification motion accordingly does not amount to an abuse of discretion.

Kerri's claim that the court acted out of prejudice and animus in denying her motion warrants little discussion. According to Kerri, the court's prejudice is reflected in the fact that it erroneously used the male pronoun in referring to her at the conclusion of the hearing. From the record, it would appear that the court simply misspoke and corrected itself after counsel pointed out the error. Kerri offers nothing to support a contrary conclusion. Suffice to say that no prejudice or animus can be reasonably inferred from this brief, isolated, and manifestly innocuous incident.

DISPOSITION

The order is affirmed. Nancy is entitled to costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Roger Lund, Judge

Superior Court County of Ventura

Law Offices of Mark Henry Shafron and Mark Henry Shafron for
Appellant.

Taylor, McCord, Praver & Cherry and Patrick G. Cherry for Respondent.