

EXAMINERS' ANALYSIS OF QUESTION NO. 7

Clarence's defense that the court is precluded from modifying alimony is clearly incorrect. While parties to a divorce may stipulate to non-modifiability of an alimony award, see *Staple v Staple*, 241 Mich App 562 (2000), where alimony is awarded after a contested trial, a court is not so bound. *Id.* at 569. *Eby v Eby*, 274 Mich App 653 (2007). MCL 552.28 provides that either party may seek to amend or modify an award. While this ability to return to court may be waived, the waiver cannot be foisted on the parties to a divorce judgment.

Clarence's second argument presents a closer question. As stated, a party may petition the court for an alimony modification. "The party moving for modifications has the burden of showing sufficiently changed circumstances to warrant modification." *Crouse v Crouse*, 140 Mich App 234, 239 (1985). Moreover, changes contemplated in the original award are not particularly persuasive as a ground for modification. *Id.*; *Havens v Havens-Anthony*, 335 Mich 445, 451 (1953).

Grounds for modification include change in need, and change in ability to pay. *Loutts v Loutts*, 309 Mich App 203 (2015) (change in need); *Elbinger v Elbinger*, 33 Mich App 166 (1971) (change in income).

Applying these principles to Clarence and Kelli's situation first yields the conclusion that because the facts are silent on remarriage or cohabitation, the salient factors are the change in need and change in ability to pay. Kelli's petition does not appear to directly relate to her diminished health. The facts do not indicate she is working less and making less because of bad health. Moreover, her health was a consideration apparently when the award was made.

Rather, it is her straight reduction in income and increased need for funds to now pay for her health care coverage that is significant. The health care coverage goes hand in hand with her bad health. With the loss of income and greater demand on that diminished income, her need has demonstrably changed for the worse. Moreover, given her relatively modest income, any reduction and corresponding increase in financial obligations

magnifies the problem, as opposed to her suffering a \$5,000 reduction and requirement to pay health care costs on far greater income.

Correspondingly, Clarence has a slightly increased ability to pay. While making \$15,000 more a year on top of the \$100,000 is not a tremendous increase, it is significant. Allowing Clarence to fully enjoy this increase in income while Kelli's life-style diminishes is what modification would likely seek to avoid.

On balance, although the court could reason its way to leaving things as they are, it is more likely Kelli would win an increase in alimony.