

EXAMINERS' ANALYSIS OF QUESTION NO. 14

Under Michigan law, a party to a divorce judgment awarding a spousal support after trial may seek to amend that award. MCL 552.28. *Staple v Staple*, 241 Mich App 562, 569 (2000). The party seeking the amendment must demonstrate at a hearing a change of circumstances since entry of the order or judgment sought to be amended. *Ackerman v Ackerman*, 197 Mich App 300, 301 (1992); *Crouse v Crouse*, 140 Mich App 234, 239 (1985); *Thornton v Thornton*, 277 Mich App 453 (2007). The burden to establish entitlement to a modification of his obligation to pay spousal support will therefore be on Mr. Baker.

The court must first be persuaded that there has been a material change in circumstances since entry of the divorce judgment. This would seem to be the case since Mr. Baker's income has been cut in half, he has in essence lost his greatest financial asset, no longer has a retirement account, and is approaching social security benefits age. In addition, aside from the financial circumstances, his health has deteriorated.

On the other hand, Mrs. Baker continues to enjoy considerable retirement and other income, as well as excellent health; although it should be noted that her total income from all sources (other than spousal support) is less than what she made while working.

The change in financial income provides the court with the sufficient change in circumstances to allow the court to revisit the spousal support award at Mr. Baker's request. *Pohl v Pohl*, 13 Mich App 662, 665 (1968), citing *Bailey v Bailey*, 352 Mich 113 (1958), and more recently *Jacobsen v Jacobsen*, 113 Mich App 473 (1982), holding the sale of a spousal support paying spouse's business and reduction in income could provide the requisite change in circumstances.

The deterioration of a party's health might also be a factor in allowing a party to seek amendment. See generally *Yanz v Yanz*, 116 Mich App 574 (1982). However, the facts are far less substantial in this regard and his deteriorating health, alone, may not be sufficient to satisfy his burden. Nevertheless, connected to his diminished benefits, his deteriorating health could be a persuasive argument when viewed in the context of his diminished earning capacity and additional drain on his income.

In sum, the court had a sufficient change in circumstances to consider Mr. Baker's claim.

Consideration of that claim is guided by the purpose of a spousal support award. The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either. *Moore v Moore*, 242 Mich App 652, 654 (2000), citing *Ackerman*, supra. While the spousal support award need not make incomes equal, it must be based on what is just and reasonable under the circumstances of the case. *Moore*, at 652, citing *Maake v Maake*, 200 Mich App 184, 187 (1993), and at bottom is an equitable decision.

At the time of entry of the divorce judgment, both parties were doing well and their respective financial futures looked solid. The original spousal support award of \$36,000 per year allowed Mrs. Baker to live a financial lifestyle corresponding to Mr. Baker's, putting her income at \$93,000 and his at \$114,000. Continuing to supplement her income by \$36,000 in spousal support would produce a total income of \$86,000, a slight drop. But with Mr. Baker making now only \$75,000, the spousal support award would cut his income nearly in half with Mrs. Baker having an income over double his. Additionally, Mrs. Baker's income seemed solid while Mr. Baker's, if not tenuous, would certainly be limited. Moreover, Mr. Baker had to pay for health care benefits while Mrs. Baker enjoyed a premium policy at no cost. Mr. Baker's 401k was gone, hers remained intact. While it might be noted that Mrs. Baker's financial situation lacked upside potential, Mr. Baker's was likely heading downward. Finally, the divergent health condition of the parties, as well, puts them on unequal footing.

The changed financial circumstances would warrant the court to eliminate or at least significantly reduce Mr. Baker's spousal support obligation.