

NOTICE
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2015 IL App (5th) 140271-U

NO. 5-14-0271

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
JAMES R. WILLIAMSON,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
and)	No. 07-D-773
)	
MELISSA D. WILLIAMSON,)	Honorable
)	Randall W. Kelley,
Respondent-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment, finding the respondent failed to show a substantial change in circumstances to warrant a modification of maintenance and interim attorney fees, was correct. We affirm.

¶ 2 The respondent, Melissa D. Williamson, appeals a judgment entered by the circuit court of St. Clair County denying her petition to modify the award of maintenance and interim attorney fees. On appeal, the respondent raises the following issue: whether the court erred in finding that she failed to show a substantial change in circumstances that would warrant consideration of modification. In response, the petitioner, James R.

Williamson, raises the following issue: whether the respondent's claims have been previously litigated and thus barred by the doctrine of *res judicata*. For the reasons hereinafter stated, we affirm the circuit court's judgment.

¶ 3 On June 29, 2009, the circuit court entered a judgment of dissolution between the petitioner and the respondent, ending their 41-year marriage. The petitioner was currently employed as circuit court judge for Johnson County, Illinois, a position he had held since 1978. His gross salary at that time was \$162,164.36. The respondent, a college-educated woman, was unemployed and had been a stay-at-home mother since the parties' daughter was born in 1975. The respondent, suffering from a multitude of health issues, claimed she was unable to obtain gainful employment due to her frail health condition.

¶ 4 At the time of dissolution, the circuit court ordered the petitioner to pay the respondent \$4,500 per month in maintenance, reviewable after the sale of the marital residence and/or the petitioner's retirement. The marital residence was to be sold within 90 days, and if not sold within 90 days, it was to be auctioned. The petitioner would be awarded 40% of the sale proceeds, and the respondent 60%, with the marital personal property to be divided on the basis of a "coin flip."

¶ 5 The petitioner was ordered to pay for the respondent's COBRA health insurance for 36 months through the petitioner's employer. The respondent's coverage expired on June 29, 2012.

¶ 6 The petitioner was ordered to maintain the premiums on his Valley Forge life insurance policy with a death benefit value of \$500,000 and to name the respondent as

the beneficiary. Additionally, the respondent was entitled to one-half of the marital portion of the petitioner's pension. The petitioner was further ordered to pay \$5,000 toward the respondent's attorney fees, as the respondent had incurred \$40,276.85 in legal fees at the time of judgment.

¶ 7 After the circuit court's judgment, the respondent filed a posttrial motion, which was argued and denied by the court on August 31, 2009.

¶ 8 On September 15, 2009, the respondent filed a timely notice of appeal. The respondent raised the following issues: (1) whether the circuit court abused its discretion by failing to award permanent monthly maintenance and failing to award a greater amount of monthly maintenance, (2) whether the court abused its discretion in failing to order the petitioner to pay all of the respondent's attorney fees, (3) whether the court abused its discretion in finding that the respondent had dissipated marital assets, and (4) whether the court abused its discretion in failing to order the petitioner to maintain additional life insurance policies with the respondent as the named beneficiary.

¶ 9 On March 17, 2010, the parties filed a petition for modification, wherein they stated that they had agreed on the distribution of the marital personal property, and that the respondent would be awarded the marital home and two adjacent tracts of land valued at \$265,000. The circuit court granted the petition for modification on April 26, 2010.

¶ 10 On January 20, 2011, this court affirmed the circuit court's June 29, 2009, judgment in a Rule 23 order, finding that the court had not abused its discretion in: (1) ordering permanent monthly maintenance of \$4,500, (2) ordering the petitioner to pay only \$5,000 of the respondent's attorney fees, (3) finding that the respondent had

dissipated marital assets during the marriage, and (4) requiring the petitioner to name the respondent as beneficiary on only one life insurance policy with a death benefit of \$500,000. *In re Marriage of Williamson*, No. 5-09-0495 (Jan. 20, 2011) (unpublished order under Supreme Court Rule 23).

¶ 11 On June 6, 2012, the respondent filed a petition for modification with the circuit court, claiming that a substantial change in circumstances had occurred and would continue to negatively impact the respondent's already precarious financial situation. The respondent states that since the time of dissolution, the petitioner's annual gross salary has increased to over \$186,000, and that his new spouse, the respondent contends, could "likely" contribute financially to the household. Claiming that she is unable to afford her current expenses, the respondent requests that the court increase the maintenance award from \$4,500 to \$7,000, retroactive to the date of filing, require the petitioner to pay for the respondent's health insurance coverage and \$7,500 in outstanding attorney fees, order the petitioner to increase the amount of death benefit for the respondent from \$500,000 to \$1,000,000, *instanter*, and show proof that the respondent is the named beneficiary on the Valley Forge life insurance policy.

¶ 12 On May 13, 2014, after a hearing between the parties, the circuit court ruled that the respondent had failed to show a substantial change in circumstances to warrant modification.¹ This appeal followed.

¹The record contains only the circuit court's order providing its decision. The court's detailed rationale for this ruling is not contained in the record.

¶ 13 The decision to modify maintenance under section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act) may occur "only upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2012). In determining whether and to what degree a maintenance award shall be modified, the court should consider the same factors assessed in determining the initial award, as set forth in section 504(a) of the Act. *Blum v. Koster*, 235 Ill. 2d 21, 30-31 (2009); 750 ILCS 5/504(a) (West 2012); *In re Marriage of Connors*, 303 Ill. App. 3d 219, 227 (1999). A few of the factors a court may consider in determining whether to modify maintenance are whether any change exists in the employment status of either party and the property awarded to each party under the judgment of dissolution and the present status of the property as well as the increase or decrease in each party's income. 750 ILCS 5/510(a-5) (West 2012). The party who seeks maintenance modification bears the burden of showing that a substantial change in circumstances has occurred. *In re Marriage of Pedersen*, 237 Ill. App. 3d 952, 956 (1992).

¶ 14 It is well-settled law that the doctrine of *res judicata* bars the same parties from relitigating the same issue after a court has entered its final judgment on the merits. *In re Marriage of Connors*, 303 Ill. App. 3d at 225-26. Under Illinois law, for the doctrine of *res judicata* to apply, the following three requirements must be satisfied: "(1) [there was] a final judgment on the merits rendered by a court of competent jurisdiction; (2) [there is an] identity of cause of action; and (3) [there is an] identity of parties or their privies." *Hudson v. City of Chicago*, 228 Ill. 2d 462, 470 (2008).

¶ 15 In the present case, a maintenance award is *res judicata* as to facts at the time the award was entered, thus, only new evidence of changed circumstances that occurred after the last modification, here, the April 26, 2010, order, will be heard. Several of the respondent's claims have received a final judgment on the merits between the same parties, including: (1) the marital debt, (2) increased marital home repairs and day-to-day expenditures, (3) outstanding attorney fees, and (4) claims for increased life insurance death benefit coverage under the petitioner's policy. Since the last modification order, the only new evidence for consideration includes the petitioner's increased income and the respondent's expiration of COBRA coverage through the petitioner's employer.

¶ 16 At the time of dissolution, the circuit court assigned and this court then affirmed, that the respondent was responsible for paying \$62,142.46 in marital debt, finding that the respondent had dissipated assets, as she was unable to account for \$85,120 in marital funds. The respondent cannot now claim she needs additional maintenance because she acquired nonmarital debt as a result of paying for the marital debt assigned by the court. The issue of marital debt existed before the dissolution and the court determined that the respondent was responsible. As a result, this issue has been previously litigated.

¶ 17 Increased marital home repairs and day-to-day expenditures, including utilities, gasoline, groceries, and general living expenditures, is not new evidence. In fact, the record reflects that the respondent understood, at the time of dissolution and at the last modification hearing, that the marital home was in need of \$70,000 in repairs, an estimate offered by the respondent. Nevertheless, the respondent still accepted sole ownership of the marital home in 2010. Further, at the time of dissolution, the respondent testified that

her total monthly expenses were \$3,046.36. However, since then, the respondent has stated that her expenses have increased, but has failed to provide the court with a clear financial explanation as to how her expenses have changed. Regardless, these issues have been previously litigated.

¶ 18 Further, in 2009, at the time of dissolution, the respondent's outstanding attorney fees were thoroughly determined by the circuit court. Even though the respondent now requests payment for her most recent attorney, it is this court's opinion that the issue of attorney fees is not new evidence. Instead, the record reflects that this issue was determined and equitably allocated by the court, finding that the respondent's inability to compromise led to a continuation of frivolous claims, a theme that has persisted throughout the entire litigation. Thus, this issue was previously litigated.

¶ 19 Lastly, the respondent requests that the court order the petitioner to increase the death benefit on the life insurance policy for the respondent from \$500,000 to \$1,000,000, *instanter*, and to show proof the respondent is the named beneficiary. First, proof of compliance for a life insurance policy is not a factor for consideration in a modification proceeding, and thus will not be analyzed. See 750 ILCS 5/510(a-5) (West 2012). Next, the record reflects that the circuit court determined that the \$500,000 life insurance policy and \$4,500 monthly maintenance was sufficient to cover the respondent's expenses for nine years should the petitioner suffer an untimely death. Thus, the issue of increasing the life insurance policy has been previously litigated.

¶ 20 Since the last petition for modification, the most salient changed facts for the court to consider are the respondent's increased health insurance coverage expenses and the

petitioner's increased income. First, the circuit court required the petitioner to pay COBRA coverage for the respondent for 36 months. This coverage expired on June 29, 2012. The respondent claims that the petitioner should be required to pay any and all additional costs for the respondent's health insurance coverage because she is now financially incapable of paying the monthly premiums. She argues that her loss of COBRA coverage is a substantial change in circumstances because acquiring health insurance coverage is "a great expense" that she cannot afford with her current maintenance award. However, this court believes the respondent has failed to provide a clear financial explanation for the associated insurance costs to justify ordering the petitioner to pay an additional \$2,500 each month as well as all health insurance expenses. Instead, the respondent rationalizes her need for the petitioner to pay her health insurance coverage because the petitioner "has substantially more income and assets" than the respondent.

¶ 21 The respondent further argues that because the petitioner's income has increased there has been a substantial change in circumstances. It does not necessarily follow that because the petitioner's income has increased, the respondent's maintenance should be increased. In fact, a "party's increase in income is generally not sufficient to warrant modification of a maintenance award." *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1005 (2008). We believe the petitioner's increased income, alone, does not constitute a substantial change in circumstances as required under section 510 of the Act.

¶ 22 At this time, the respondent has stated that she needs additional maintenance, but has failed to provide the court with a clear showing as to how her expenses have

substantially changed, which would warrant a need for additional income. We believe the circuit court's determination in granting the initial maintenance award carefully considered the respondent's years of contribution to the marriage, the lifestyle she became accustomed to during marriage, her current and future health needs, and her future earning capacity. As a result, the court provided the respondent with permanent monthly maintenance of \$4,500, without term restrictions, and a \$500,000 life insurance policy to sustain her for nine years upon the untimely death of the petitioner. Therefore, we refuse to modify the maintenance award solely on the fact that the petitioner has more disposable income at this time.

¶ 23 For the foregoing reasons, this court affirms the circuit court's judgment granting the petitioner's motion to dismiss the respondent's petition for maintenance modification and interim attorney fees.

¶ 24 Affirmed.