

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).

2016 IL App (4th) 150766-U

NO. 4-15-0766

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 14, 2016

Carla Bender

4th District Appellate Court, IL

In re: MARRIAGE OF)	Appeal from
DIANE CRAMSEY,)	Circuit Court of
Petitioner-Appellee,)	Adams County
and)	No. 12D284
RICHARD G. CRAMSEY,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in striking respondent's amended motion to modify spousal maintenance based on *res judicata* grounds without conducting an evidentiary hearing.

¶ 2 Respondent, Richard G. Cramsey, appeals from the trial court's order granting the motion to strike filed by petitioner, Diane Cramsey. Petitioner filed a motion to strike respondent's amended motion to modify his spousal maintenance obligation based upon a substantial change of circumstances. Without considering respondent's evidence of those circumstances, the court found the issue had previously been decided in November 2014. We reverse and remand with directions for the court to conduct an evidentiary hearing on respondent's amended motion to modify maintenance.

¶ 3 I. BACKGROUND

¶ 4 In October 2012, petitioner filed a petition to dissolve the 38-year marriage between her and respondent. Because the parties' children were emancipated, the contested issues related only to the division of property and spousal maintenance.

¶ 5 After a September 2014 trial, the trial court ordered respondent to pay petitioner \$125,000 within three months plus \$4,275 per month in permanent maintenance. At the time, respondent was employed as a pharmaceutical representative for GlaxoSmithKline (GSK), earning approximately \$110,000 per year. Petitioner was employed part-time as a substitute teacher, earning approximately \$3,655 per year.

¶ 6 On November 12, 2014, respondent filed a posttrial motion asking the trial court to (1) reopen the evidence for the presentation of further employment-related evidence; and (2) reconsider the amount of permanent maintenance. Respondent alleged, on September 29, 2014, he received a "final warning" from GSK's Steve Bradford, notifying him he scored "less than proficient" on his professional scorecard. Bradford warned respondent to improve or risk "separation from employment." Also on September 29, 2014, respondent received a memorandum from GSK's Sharon Koch, human resources manager, indicating respondent had been offered the choice of "continuing the discipline or electing to resign by mutual agreement (RMA)." The RMA would include 52 weeks' severance pay and insurance benefits in exchange for his resignation.

¶ 7 Respondent alleged he "tentatively accepted the terms of the RMA" on October 1, 2014, and on October 6, 2014, GSK forwarded the severance package to respondent for review. Before accepting the terms of the RMA, on October 31, 2014, respondent filed a request for a medical leave of absence pursuant to the Family and Medical Leave Act due to his reported unstable mental health and depression, for which he was being treated. On November 7, 2014,

respondent's treatment provider completed a short-term disability benefit statement. According to the allegations in his posttrial motion, respondent hoped he would not have to make a final decision on the RMA until after his medical leave expired. However, on November 6, 2014, Koch sent respondent a letter advising him the medical leave would not extend the time for his resignation under the RMA. Koch established November 12, 2014, as respondent's date of resignation.

¶ 8 In his motion, respondent alleged the evidence relating to his deficient performance and resignation from his employment was new evidence not available during the September 2014 trial. He requested the trial court allow a new trial or, in the alternative, to reopen the evidence.

¶ 9 Respondent's motion also included a "motion to reconsider." He requested the trial court reconsider the \$4,275 monthly spousal support ordered because (1) the calculation was erroneously based upon a statutory amendment which had not yet taken effect, (2) he has insufficient income to pay the amount ordered, (3) the court failed to consider the needs of respondent, and (4) the court failed to consider the lack of respondent's future earning capacity.

¶ 10 On November 19, 2014, petitioner filed a motion to dismiss respondent's posttrial motion, claiming respondent was not entitled to a new trial or to reopen the evidence on the facts alleged in his motion. Petitioner argued respondent was not utilizing the proper procedure for pursuing his claims. She claimed respondent alleged a potential change in circumstances, not newly discovered evidence.

¶ 11 Also on November 19, 2014, the trial court conducted a hearing on petitioner's motion to dismiss. After considering arguments of counsel, the court granted petitioner's motion, finding respondent had failed to state a cause of action. The court noted respondent did not

anticipate any changes in his income for the next year based on the RMA and "what the respondent's income may be during that year or thereafter is certainly not known today."

¶ 12 On November 20, 2014, the trial court entered a written order dismissing respondent's posttrial motion, and the court entered a final judgment of dissolution of marriage. The judgment ordered respondent to pay petitioner \$4,275 per month in permanent maintenance.

¶ 13 On May 29, 2015, respondent filed a motion to modify, claiming his employment with GSK was terminated on May 22, 2015, due to a "reduction in the size of our workforce." He asserted he was "no longer fiscally able to meet the spousal maintenance obligation ordered by [the] court's judgment of November 20, 2014." Petitioner moved to strike respondent's motion, alleging it was substantially insufficient in stating a substantial change of circumstances.

¶ 14 After a July 16, 2015, nonevidentiary hearing, the trial court agreed with petitioner. The court found the ground for respondent's posttrial motion, which sought to modify his maintenance obligation, was based on the allegation that, in November 2014, respondent lost his employment with GSK. The court further found that respondent's current motion to modify his maintenance obligation was likewise based on the allegation that, in May 2015, respondent lost his employment with GSK. Because the court had previously determined, in November 2014, the lost-employment allegation was not a basis to modify maintenance, and respondent had not presented any different grounds or a substantial change in circumstances in support of his current motion, the court granted petitioner's motion to strike. However, the court granted respondent leave to amend.

¶ 15 On August 7, 2015, respondent filed an amended motion to modify maintenance, and on August 20, 2015, the trial court conducted a nonevidentiary hearing to consider the motion. The court found respondent's amended motion was "substantially the same as the first

motion to modify that was filed by [respondent] on or about May 29[, 2015]." Because the court, on July 16, 2015, granted petitioner's motion to strike the May 29, 2015, motion and nothing substantially different had been presented in respondent's amended motion to modify, the court ordered respondent's amended motion to modify stricken as well, "pursuant to *res judicata*."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Respondent appeals the trial court's August 20, 2015, order striking his amended motion to modify on *res judicata* grounds. First, he claims *res judicata* does not apply when determining the sufficiency of an amended pleading. Second, in the alternative, he claims *res judicata* should not be applied when fairness dictates otherwise. We find the trial court's *res judicata* finding was erroneous for the following reasons.

¶ 19 It is unclear from the parties' briefs whether they believe the trial court found in August 2015 that *res judicata* applied to the November 2014 decision or the July 2015 decision. Petitioner seems to argue *res judicata* applied to the November 2014 decision, whereas respondent seems to argue the court found *res judicata* applied to the July 2015 decision. Regardless, based on the facts and record before us, we find *res judicata* does not apply to bar respondent's motion to modify.

"The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction acts as an absolute bar to a subsequent action between the same parties or their privies involving the same claim, demand, or cause of action. The bar extends not only to all matters that were actually decided but also to those matters that could have been decided in

the prior action. [Citations.] Three requirements must be met for *res judicata* to apply: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) identity of cause of action; and (3) identity of parties or their privies" *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 9.

¶ 20 We will assume the trial court intended for its November 2014 decision denying respondent's posttrial motion to bar the relitigation of his May 2015 motion to modify. However, the facts alleged in respondent's May 2015 motion to modify were drastically different than the facts alleged in his November 2014 posttrial motion. Although both motions alleged respondent had "lost his employment," each motion presented different circumstances.

¶ 21 Under section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act), "[a]n order of maintenance may be modified or terminated only upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2014). This court noted, "Illinois courts have held 'substantial change in circumstances' as required under section 510 of the Act means either the needs of the spouse receiving maintenance or the ability of the other spouse to pay maintenance has changed. The party seeking modification of a maintenance order bears the burden of showing the change, and the decision to modify maintenance is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *In re Marriage of Neuman*, 295 Ill. App. 3d 212, 214 (1998). An abuse of discretion takes place when " 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 22 A maintenance award is *res judicata* only to those facts at the time it is entered, and changed circumstances justifying the modification of maintenance must occur after the

award. *In re Marriage of Waldschmidt*, 241 Ill. App. 3d 7, 11 (1993). Additionally, where a modification has been sought more than once, the trial court is to consider only the facts that occurred since the last modification hearing and to alter the award only upon showing of a substantial change in circumstances since that date. *In re Marriage of Pedersen*, 237 Ill. App. 3d 952, 957 (1992).

¶ 23 In this case, respondent alleged, in his May 29, 2015, motion, his "employment with GSK was terminated effective May 22, 2015." This allegation, based on the date alone, could not have supported his November 2014 posttrial motion, wherein he sought modification of maintenance. It appears to this court, based on the record before us, the facts surrounding respondent's loss of employment were significantly different when he alleged he lost his job in November 2014 and when he alleged he lost his job in May 2015. Whether those allegations constitute a substantial change in circumstances so as to justify a modification of his ordered spousal maintenance is a decision for the trial court. However, we find the court's decision should be based on competent evidence presented at a hearing, where the parties may respectively challenge that evidence by cross-examination. In other words, we reverse the court's order granting petitioner's motion to strike and remand the cause with directions for the court to rule on respondent's motion to modify after conducting an evidentiary hearing on the issue.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we reverse the trial court's judgment entered August 20, 2015, and remand for further proceedings consistent with this decision.

¶ 26 Reversed; cause remanded with directions.