

Circuit Court for Washington County
Case No. 21-C-01-012738

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2388

September Term, 2016

GOTTHARD G. SEKULA

v.

URSULA J. SEKULA

Graeff,
Fader,
Eyler, James R.,
(Senior judge, specially assigned)

JJ.

Opinion by Eyler, James R., J.

Filed: February 14, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case comes to us from a decision by the Circuit Court for Washington County denying a motion to terminate or reduce alimony. The parties, Gotthard G. Sekula, a.k.a. Charles Sekula, appellant, and Ursula Sekula, appellee, were married in 1970 and divorced in 2003. At the time of the divorce, Ms. Sekula was granted, among other things, indefinite alimony in the amount of \$3,000 per month.

On several occasions thereafter, Mr. Sekula sought to terminate or reduce the amount of indefinite alimony. On January 26, 2007, he filed a motion to terminate or reduce alimony; subsequently, Ms. Sekula filed a motion requesting an increase in alimony. After a hearing, both motions were denied. In March 2009, Mr. Sekula filed a second motion to terminate or reduce alimony. After a hearing on October 26, 2009, the circuit court granted the motion and reduced the amount of indefinite alimony to \$2,000 per month. Most recently, on June 20, 2016, Mr. Sekula filed a third motion to terminate or modify alimony. After a hearing on November 3, 2016, the circuit court denied the motion. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court erred in denying the June 2016 motion to terminate or reduce alimony. For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

During the course of their marriage, Mr. and Ms. Sekula owned and operated a Bavarian themed restaurant in Hagerstown known as the Schmankerl Stube. When the parties divorced, Mr. Sekula continued to own and manage the restaurant and Ms. Sekula

returned to her career as a beautician, something she had done before she and her husband had purchased the restaurant. As part of the divorce proceeding, Ms. Sekula was awarded indefinite alimony in the amount of \$3,000 per month. As noted above, in 2009, the circuit court reduced Mr. Sekula’s monthly alimony obligation to \$2,000.

In this appeal, we are concerned with the most recent motion to terminate or reduce alimony. At the hearing on that motion, Mr. Sekula was represented by counsel and Ms. Sekula proceeded in proper person. Mr. Sekula’s argument, generally, was that he was getting older and unable to perform the tasks of his employment, that he had developed some medical conditions including Parkinson’s disease and dementia, that he “makes less money,” that Ms. Sekula was earning more money, and that, although there was disparity in their incomes, there was not the “substantial chasm of an income gap that perhaps existed in 2003.”

At the November 3, 2016 hearing, Dieter Bloesel testified that he had been working at the restaurant since 1999, that Mr. Sekula had brought him over from Germany and “secured a green card” for him, and that, on December 31, 2008, he purchased the restaurant and the building it was in from Mr. Sekula for \$585,000. Mr. Bloesel paid Mr. Sekula \$285,000 up front and entered into a secured loan agreement with him for the remaining \$300,000. Under the terms of the loan agreement, prior to 2015, Mr. Bloesel paid Mr. Sekula \$1,610.46 per month. In 2015, Mr. Sekula and Mr. Bloesel modified the terms of their agreement and reduced Mr. Bloesel’s monthly obligation “to \$1,365 and some change.”

Mr. Bloesel testified that after he purchased the restaurant, Mr. Sekula continued to be employed as “the host” and “the face” of the restaurant. From 2009 through 2011, Mr. Sekula was paid a salary of \$89,000 to \$90,000. The plan was for Mr. Sekula to phase out from the restaurant slowly over time. That plan changed in early 2016 when Mr. Sekula was diagnosed with Parkinson’s disease and dementia. Mr. Bloesel noticed that Mr. Sekula’s ability to work “decreased significantly.” As a result, he had to hire a new employee to perform some of the tasks that Mr. Sekula had handled in the past. Instead of working the 60 to 80 hours per week that he used to work, Mr. Sekula’s hours were reduced to about 20 to 25 hours per week. In March 2016, Mr. Bloesel and Mr. Sekula agreed that Mr. Sekula’s salary was reduced to \$52,000. The restaurant building had rental units on the second floor. Mr. Bloesel acknowledged that he did not rent them.

Mr. Sekula testified that he sold the restaurant business and the building in which it was located to Mr. Bloesel prior to the 2009 hearing on his second motion to terminate or reduce alimony. He did so because he had colon cancer. Mr. Sekula testified, and his tax returns showed, that in 2008 he had total income of \$184,929 and adjusted gross income in the amount of \$142,929. In 2014, he had total income of \$125,280 and an adjusted gross income of \$94,780. In 2015, he had total income of \$138,788 and an adjusted gross income of \$114,788.

In 2015, Mr. Sekula developed “forgetfulness,” and in the following year, he was diagnosed with Parkinson’s disease and dementia. He was unable to lift or walk as fast as he used to, had a problem maintaining his balance, and had hypertension and heart disease.

In early 2016, Mr. Sekula began taking Levadopa twice a day for the Parkinson’s disease, which caused him to experience dizziness .

In 2016, in addition to \$52,000 in salary, Mr. Sekula received “around \$1,300 every month” from Mr. Blossel’s mortgage payment, \$350 in retirement benefits from his former employer, Mack Truck, and “about \$2,024” in social security benefits. He estimated that his gross wages for 2016 would be about \$93,000. He also acknowledged that he had a stock account worth about \$50,000 and that he owned a 2000 Mercedes 230-E. Mr. Sekula paid off the mortgage on his home “[b]ecause of [his] illness” and because he “didn’t want to leave ... any bad debts behind” him. He did not pay for food or drinks at the restaurant, although he did not eat all of his meals there.

Mr. Sekula asserted that he did not have the ability to pay \$24,000 a year in alimony and also meet his own basic living needs. He stated that his health care costs had increased and that he spent a minimum of \$10,000 a year on medications, although he acknowledged that he received Medicare and had supplemental insurance coverage.

Ms. Sekula testified that, after the parties divorced, she purchased a home in Hagerstown for \$360,000, but its value has declined and the property is worth about \$300,000. She testified that at the time of the divorce she was granted a marital award “in excess of \$200,000” and that she used that money to purchase her house. When she was unable to pay her bills, she obtained a home equity line of credit. Ms. Sekula’s income increased between 2009 and the date of the hearing. She testified that it took her about 15 years to build up her business as a hair dresser because she had given up her previous hair dresser business when she and Mr. Sekula purchased the restaurant. At the time of the

underlying hearing, Ms. Sekula worked 3 days a week as a hair dresser. She testified that she had “really bad legs from standing on [her] legs all [her] life” and that she worked 3 days per week so that her legs could recuperate on her days off.

Ms. Sekula testified, and her tax returns showed, that in 2011 she earned income in the amount of \$24,859 and that \$24,000 of that came from alimony. In 2015, her income was \$51,799, which included her alimony, income from her work as a hair dresser, and social security benefits.

At the time of the 2009 hearing, Ms. Sekula had significant tax liabilities, but her sister, who lived in Germany, sent her the money to pay those taxes. At the time of the 2016 hearing, she no longer had any outstanding tax liabilities.

Ms. Sekula asserted that notwithstanding the sale of the restaurant to Mr. Bloesel, Mr. Sekula was, in fact, still the owner of the business. She claimed that Mr. Sekula was listed as the agent for the restaurant business on some unidentified papers, that it was illogical for Mr. Sekula to have sold the restaurant, which “brings in a million dollars,” for such a small amount. She noted that she and Mr. Sekula had purchased the building in 1987 for \$125,000 and borrowed \$450,000 from the city to fix it up. According to Ms. Sekula, her former husband transferred assets to Mr. Bloesel to “make himself poor.” She also asserted that she and Mr. Sekula used to earn \$59,000 to \$69,000 a year in rental income from the units on the second floor of the restaurant building. Referring to the rental income, she stated that Mr. Sekula “literally gave it away” when he sold the restaurant building to Mr. Bloesel. She further asserted that Mr. Sekula had a bank account in Germany

and owned stocks, but she did not have any proof of these assets because “he hides everything.”

John Cooper used to work at the restaurant when Mr. and Mrs. Sekula were operating it. Ms. Sekula permits him to live in a room in her house. She does not charge him any rent, but he purchases about \$400 worth of groceries each month, cuts the grass, shovels snow, and helps her out.

At the conclusion of the hearing, the court took the case under advisement. In a written opinion and order dated December 5, 2016, the court denied the motion to terminate or modify alimony. The court noted that the evidence presented at the hearing established that Mr. Sekula’s income had “substantially increased” and, indeed, nearly doubled, from the income determination of \$69,325.56 made at the hearing on his 2009 motion for termination or modification of alimony. In addition, the court noted that there was a lack of evidence regarding the parties’ expenses, stating:

While the evidence presented shows that Plaintiff’s income has increased, evidence has not been presented showing whether Plaintiff’s expenses have increased or decreased. Financial statements were not presented as evidence. Plaintiff’s income would likely decrease when he retires, but the significant increase in Plaintiff’s income since the previous modification of alimony has occurred despite Plaintiff’s partial retirement. Due to sparse evidence presented to the court, it is difficult to ascertain Plaintiff’s current or future financial circumstances or the needs of the parties.

Defendant’s income has increased modestly in recent years. Defendant’s 2011 tax filings report \$24,859 in income for the year, and nearly all of this income came from alimony payments. In 2015, Defendant made approximately \$51,799 in part to [sic] an increase in work. It is unclear whether this increase in income has resulted in an overall improvement in financial circumstances because there has been sparse evidence of annual expenses.

Without more evidence, this court cannot conclude that a modification or termination of alimony is appropriate at this time. For the foregoing reasons, Plaintiff’s Petition to Modify and/or Terminate Alimony is denied.

DISCUSSION

In cases such as this, which have been tried without a jury, we “review the case on both the law and the evidence.” Md. Rule 8-131(c). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous” and we “give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.*

A trial court has broad discretion in making an award of alimony, *Blaine v. Blaine*, 336 Md. 49, 74 (1994), and in determining the extent and amount of alimony. *Baer v. Baer*, 128 Md. App. 469, 484 (1999). In exercising its discretion as to whether to make an initial award, the court must consider the specific factors set forth in Md. Code (2012 Repl. Vol.), § 11-106 of the Family Law Article (“FL”).¹

¹ Section 11-106 of the Family Law Article provides:

(a) *Court to make determination.* -- (1) The court shall determine the amount of and the period for an award of alimony.

(2) The court may award alimony for a period beginning from the filing of the pleading that requests alimony.

(3) At the conclusion of the period of the award of alimony, no further alimony shall accrue.

(b) *Required considerations.* -- In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:

(1) the ability of the party seeking alimony to be wholly or partly self-supporting;

(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;

(3) the standard of living that the parties established during their marriage;

Modification of the amount of an alimony award is permitted on the petition of either party “as circumstances and justice require.” FL §11-107. Termination of alimony is permitted “if the court finds that termination is necessary to avoid a harsh and inequitable result.” FL § 11-108(3).

Whether a paying party is seeking to modify an award of alimony under FL § 11-107, or to terminate it under FL § 11-108, that party bears the burden of proof on the

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- (4) the duration of the marriage;
 - (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
 - (6) the circumstances that contributed to the estrangement of the parties;
 - (7) the age of each party;
 - (8) the physical and mental condition of each party;
 - (9) the ability of the party from whom alimony is sought to meet that party’s needs while meeting the needs of the party seeking alimony;
 - (10) any agreement between the parties;
 - (11) the financial needs and financial resources of each party, including:
 - (i) all income and assets, including property that does not produce income;
 - (ii) any award made under §§ 8-205 and 8-208 of this article;
 - (iii) the nature and amount of the financial obligations of each party;and
 - (iv) the right of each party to receive retirement benefits; and
 - (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.
- (c) *Award for indefinite period.* -- The court may award alimony for an indefinite period, if the court finds that:
- (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
 - (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

modification or termination question. *See Langston v. Langston*, 366 Md. 490, 516 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516, 539 (2005); *Ridgeway v. Ridgeway*, 171 Md. App. 373, 384 (2006), *cert. denied*, 396 Md. 526 (2007). “A party requesting modification of an alimony award must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification.” *Langston*, 366 Md. at 516.

In the case at hand, we discern no clear error in the findings of fact and no error in the circuit court’s conclusion that Mr. Sekula failed to present sufficient evidence to justify the court exercising its discretion to grant relief. Preliminarily, we reject Mr. Sekula’s contention that the trial court erred in relying on the court’s 2009 factual determination that his gross income from wages and Mr. Bosel’s \$1,610.46 per month payment on the mortgage totaled \$69,325.56. There is nothing in the record to suggest that Mr. Sekula ever challenged that finding, which was quite favorable to him at the time it was made. In modifying a decree for alimony, a court “may not relitigate matters that were or should have been considered at the time of the initial award.” *Lott v. Lott*, 17 Md. App. 440, 444 (1973); *Blaine v. Blaine*, 97 Md. App. 689, 702 (1993), *aff’d* 336 Md. 49 (1994); *Ridgeway*, 171 Md. App. at 384. The same doctrine applies to the 2009 proceeding.

Thus, the circuit court did not err in finding that Mr. Sekula’s income had increased since 2009. In any event, aside from the increase, the evidence demonstrated earnings in the amount of \$125,280 in 2014 and \$138,788 in 2015. Nor did the circuit court err in finding that the evidence of Mr. Sekula’s expenses was so sparse as to make it difficult to ascertain his current or future financial circumstances. Mr. Sekula failed to offer his

financial statements into evidence. Although he claimed to have spent more than \$10,000 a year on medications, he offered no supporting evidence. Nor did he offer any evidence to establish what his future needs and expenses would be in light of his Parkinson’s disease and dementia.

In addition, the court did not err in determining that there was sparse evidence of Ms. Sekula’s annual expenses. As a result, notwithstanding an increase in her annual income, the court was unable to determine whether there had been an overall improvement in her financial circumstances. As we have already noted, Mr. Sekula bore the burden of proof, but he failed to meet that burden in this case. On the record before it, the circuit court did not err in determining that there was insufficient evidence to justify exercising its discretion to modify or terminate alimony.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**