

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

GRACE AUGE CASKEY,	:	APPEAL NO. C-120395
Plaintiff-Appellee,	:	TRIAL NO. DR-0101158
vs.	:	<i>JUDGMENT ENTRY.</i>
JAMES BARTON CASKEY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant James Barton Caskey appeals from the 2012 judgment of the Hamilton County Court of Common Pleas, Domestic Relations Division, denying his post-decree motion to modify the spousal support of his former wife, plaintiff-appellee Grace Auge Caskey.

The parties were divorced in 2002. Their agreed entry and decree of divorce required James to pay monthly spousal support in the amount of \$2,500, even though at the time James had no significant employment income, only a revenue stream from the sale of a business. The decree included a specification that James's spousal-support obligation would terminate upon the death of either party or upon Grace's marriage or matrimonial-like cohabitation. However, in the decree, the court specifically retained jurisdiction to modify the amount and duration of support.

At issue is James's June 2011 motion. James moved to modify his spousal-support obligation, alleging a change in his circumstances based on the following: his age of 67, his receipt of social security benefits, and his sale of his business that he had formed after the divorce. After the sale, James received installment payments from the sale, but he no longer earned employment income.

A magistrate recommended that the motion be denied because James had failed to demonstrate that a substantial change had occurred in the circumstances of either party and that the change had not been contemplated at the time of the divorce. James filed objections to the magistrate's decision. The trial court overruled the objections, and accepted and adopted the magistrate's decision that James had failed to demonstrate a substantial change in circumstances that justified the modification of support. James now appeals from the trial court's decision, raising four assignments of error.

In his second assignment of error, which we address first, James essentially argues that the trial court erred by failing to recognize that, as a matter of law, an existing spousal-support order should be either modified or terminated when a payor-spouse reaches a customary retirement age and determines that it is time to leave his or her occupation. In support, he cites a Massachusetts law that provides for the termination of "alimony" orders upon the "payor attaining the full retirement age when he or she is eligible for the old-age retirement benefit under [Social Security.]" But the Ohio legislature has not enacted a similar law; instead, the relevant Ohio statute provides that spousal support "shall terminate upon the death of either party, unless the order containing the award expressly provides otherwise." R.C. 3105.18(B).¹ Because James has failed to demonstrate the assigned error, we overrule it.

¹ This language in R.C. 3105.18(B) was not altered by the recent amendments to the statute in 2012 H.B. No. 461, effective Mar. 22, 2013.

In his first and third assignments of error, which we recast, James argues that the trial court erred by failing to modify his spousal support. Where a party requests the modification of an existing order of spousal support, and the court had reserved jurisdiction over the matter, the threshold determination is whether there had been a substantial change in the circumstances of either party that was not contemplated at the time of the original order. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, 905 N.E.2d 172, paragraph two of the syllabus, abrogated in part by amendment to R.C. 3105.18, effective Mar. 22, 2013. The alleged-change-in-circumstances must be proved by a comparison with circumstances at the time of the divorce, and it must be substantial. *See id.*

We review the trial court's decision denying a motion to modify spousal support under an abuse of discretion standard. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 218-219, 450 N.E.2d 1140 (1983). An abuse of discretion indicates that the court's decision was arbitrary, unconscionable, or unreasonable. *Id.*

James based his motion to modify on his attainment of the age of 67, his receipt of social security benefits, and his sale of his business, which left him without employment income. When determining that James had failed to demonstrate sufficient changed circumstances that justified a modification of support, the trial court took into account James's income from all sources, referencing R.C. 3105.18(C)(1)(a), and considered that James was in good health and that he continued to work at a start-up venture that he was developing, despite his age and his receipt of social security benefits. Ultimately, the court concluded that James's economic situation had not changed materially since the time of the decree, and that there had not been a substantial change in the circumstances of either party. Given the evidence in the record that was carefully reviewed by the trial court, we

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cannot find the court's decision not to grant James's motion for a modification was unreasonable, arbitrary, or unconscionable.

In his fourth assignment of error, James contends that the magistrate erred by ruling that he was required to prove that his aging, retirement, or receipt of social security benefits was not contemplated by the parties at the time of the decree. We overrule this assignment of error because, as the trial court noted, the issue is moot, where James failed to demonstrate that there had been a substantial change in circumstances.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on July 10, 2013

per order of the court _____.

Presiding Judge