

COA Opinion: New trial judge abused discretion in reconsidering first judge's denial of motion to modify spousal support

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In *Estate of Stanley Luckow v Luckow*, the Court of Appeals reversed the trial court's grant of a motion for reconsideration seeking to modify a spousal support order recommended before the supporting spouse died, but not adopted until afterward. The Court of Appeals found that the original judge's denial of the wife's motion to increase spousal support after her ex-husband's death was not palpable error and concluded that there was no basis for the successor judge to reconsider the motion.

Plaintiff and defendant divorced in 2003. The judgment of divorce ordered plaintiff, Mr. Luckow, to pay defendant, Mrs. Luckow, spousal support. Prior to his death, Mr. Luckow moved for a reduction in support. The parties eventually stipulated to binding arbitration. The arbitrator recommended that Mr. Luckow's spousal support obligation be abated to zero, but reserved further adjudication if circumstances changed. The arbitrator also determined that Mrs. Luckow was entitled to more than \$35,000 in support arrearages but limited the obligation to pay by way of a life insurance policy to this amount.

Prior to the court's adoption of the arbitrator's report and recommendation, Mr. Luckow died, and his estate substituted as plaintiff in the action. After the trial court adopted the arbitrator's recommendation, Mrs. Luckow moved to have the spousal support modified, citing her ex-husband's death and her increased expenses as a change in circumstances. The trial court recognized that spousal support can be modified after death, but denied her motion because under general principles of equity increasing spousal support was inappropriate. The trial court found it difficult to reconcile abating Mr. Luckow's spousal support to zero while he was alive but then increasing the support order after he died and his estate was earning no income.

Mrs. Luckow filed a motion for reconsideration after the case went to a new judge. The successor judge, Judge Cholack, granted her motion, finding that the prior judge, Judge Skutt, committed palpable error by concluding that once spousal support had been abated to zero it could not be increased.

But the Court of Appeals reversed, noting that Judge Skutt acknowledged that the spousal support could have been modified; he simply decided not to do so. The Court concluded that Judge Cholack abused his discretion in granting Mrs. Luckow's motion. The Court of Appeals went on to state "to the extent that Judge Cholack found error in Judge Skutt's consideration of general principles of equity, a mere difference in opinion regarding the equities of the matter does not constitute a palpable error sufficient to warrant reconsideration of the decision."