

COA Opinion: Failure of defendant-payor's business does not qualify as extraordinary circumstance allowing court to vacate nonmodifiable provision of spousal support award

23. June 2010 By Richard Roane

On Tuesday, June 22, 2010, the Michigan Court of Appeals published its opinion in *Rose v. Rose*, Case No. 286568. In *Rose*, the Court of Appeals considered when a trial court may modify a party's spousal support obligation, under MCR 2.612(C)(1), where the Judgment of Divorce provides that the spousal support award is nonmodifiable. Ultimately, the Court of Appeals concluded that the failure of defendant's business did not constitute an extraordinary circumstance allowing the Court to modify the spousal support award, pursuant to MCR 2.612(C)(1)(f), where vacating this provision of the Judgment of Divorce would detrimentally affect plaintiff-wife's substantial rights. A copy of the Court's opinion is [here](#). Our previous post discussing the oral argument in *Rose* can be found [here](#).

In *Rose*, the parties divorced in 2006 after 22 years of marriage. At that time, the most valuable marital asset was \$6 million worth of stock the defendant-husband owned in Die Tron, Inc., a tool-and-die company. Rather than liquidating his stock, the defendant wished to keep the business so his son could run it. Therefore, the parties agreed that defendant would pay plaintiff spousal support in the amount of \$230,000 a year and that this spousal support would be nonmodifiable.

After the divorce, defendant turned over day-to-day operation of the business to his son. Unfortunately, this son committed a number of financial improprieties including the falsifying of financial records that ultimately forced the company to close in March 2008. Plaintiff and defendant reached an informal agreement whereby plaintiff would temporarily forebear seeking enforcement of the spousal support payments which were not being made pursuant to the terms of the parties' agreement set forth in the Judgment of Divorce. Several months after the forbearance period, plaintiff filed a motion to enforce the spousal support provision of the Judgment. Defendant countered with a motion to modify his support obligation pursuant to MCR 2.612.

After an evidentiary hearing, the trial court found that although the nonmodifiable spousal support language of the Judgment fully complied with the requirements dictated in *Staple v. Staple*, 241 Mich. App. 562, 564, 616 N.W.2d 219 (2000), extraordinary circumstances existed to justify relieving the defendant from the nonmodifiable spousal support provision of the judgment under MCR 2.612(C)(1)(f). In particular, the trial court found that the defendant was not responsible for the loss of the business and that without this income, defendant would not be able to pay the spousal support as set forth in the judgment. Additionally, the Court concluded that plaintiff's

rights were not detrimentally affected by relieving defendant from his spousal support obligation, because she was only entitled to *equitable* spousal support.

In reversing the trial court's decision and remanding the case, the Court of Appeals concluded that the trial court erred by failing to afford proper deference to the parties' binding agreement.

The Court of Appeals focused on contract theory when analyzing the parties' agreement, stating "[a] divorce judgment entered by agreement of the parties represents a contract." The Court of Appeals went on further to state that it is well settled that contracts must be enforced as written. "The instant parties negotiated a divorce judgment containing unambiguous spousal support terminology prohibiting future modifications regardless of any change in circumstances or in the lifestyles of the plaintiff or defendant." Instead of opting for the flexibility that a modifiable spousal support agreement could provide, the parties struck a bargain favoring finality, benefitting both. "In striking their deal, both parties deliberately risked that future circumstances would render their contract inequitable."

Where the parties have expressly elected nonmodifiable spousal support, the trial court may only consider relief under MCR 2.612(C)(1)(f) if extraordinary situations exist not covered by subsections (a) through (e). Additionally, the court must refrain from vacating a judgment if doing so will detrimentally affect the rights of the opposing party. The Court of Appeals stated that the trial court incorrectly found that the vacating of the spousal support award did not detrimentally affect plaintiff's substantial rights and therefore the trial court abused its discretion in granting defendant's motion to set aside the judgment.

The Court of Appeals further acknowledged that in rare cases, a trial court's equitable power to do justice may require setting aside a judgment despite prejudice to the opposing party. However, this power is limited to truly exceptional circumstances which generally arise when the judgment was obtained by the improper conduct of a party. The court concluded that no misconduct occurred in this case. Additionally, although the failure of defendant's business was tragic, it was not extraordinary. As a business owner, defendant understood that a number of factors could affect the financial well-being of his business. Nevertheless, he agreed to nonmodifiable support.

The case was remanded to the Ottawa County Circuit Court for further proceedings consistent with this decision.