

Cite as 2023 Ark. App. 438  
**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CV-22-410

CARL ROBERTS

APPELLANT

V.

KAREN ROBERTS

APPELLEE

Opinion Delivered October 4, 2023

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. 04DR-10-620]

HONORABLE DOUG SCHRANTZ,  
JUDGE

AFFIRMED

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**STEPHANIE POTTER BARRETT, Judge**

Appellant Carl Roberts appeals the Benton County Circuit Court's refusal to terminate his monthly alimony obligation to his former spouse, appellee Karen Roberts. Although the circuit court reduced Carl's alimony payments as he requested, he argues that the circuit court erred in the amount of reduction and in failing to make the reduction retroactive to the date he filed his petition to modify alimony. We affirm the circuit court's decision.

The parties were married on February 12, 1977, and divorced on August 6, 2010. In the divorce decree, in addition to dividing the parties' marital property, the circuit court awarded Karen \$3000 a month in alimony until she remarried or died, noting that the parties had been married for thirty-three years; Karen had been a stay-at-home mom who had limited vocational abilities and minimal prospects for employment; and she had cardiac issues. The

decree provided that Carl's alimony obligation could be adjusted if his circumstances changed in the future.

On July 30, 2013, the circuit court entered an order denying a request from Carl to modify his \$3000 monthly alimony obligation. In denying this request, the circuit court noted that Karen had maintained a home equivalent to Carl's home before Carl purchased a substantially larger and more expensive home; that even though Carl had lost his pharmacist job at USA Drug and was only partially employed, he had made no effort to sell the new, larger house; that Carl had purchased new furniture, sent his new wife to the casino, and had taken trips to North Carolina and New York—luxuries Karen had not enjoyed; that Carl continued to make church contributions that were beyond the amount he could afford based on his current employment; that Carl had essentially quit looking for full-time employment; and that although Carl's new home was held jointly in his and his new wife's names, the new wife contributed very little financially to the household expenses. The circuit court found that a modification of alimony was not warranted: Karen's needs and need for income had not changed, and the alimony was modest in comparison to the income enjoyed by the parties at the time of divorce. The circuit court stated in its order that Karen had managed to get by with her current alimony, and it suggested that Carl make changes as well to get by and still meet his alimony obligation.

On March 30, 2015, the parties filed a joint agreed order reducing Carl's alimony obligation to \$2500 a month, effective April 1, 2015. Carl filed another motion to modify alimony on March 19, 2021, alleging that there had been a material and substantial change

in circumstances since the last court order regarding alimony and that he was entitled to a reduction or termination of his alimony obligation. Carl's basis for this request was that he was unemployed due to a bout with cancer, and he was living off his Social Security and retirement holdings.

The circuit court entered an order on March 10, 2022, finding that a material change in circumstances had occurred since entry of the last order modifying alimony—Carl had now retired, and his primary income was \$1995 in monthly Social Security. The circuit court, after reviewing the parties' financial statuses, including the significant assets still retained by each party, reduced Carl's monthly alimony obligation to \$2000 a month. Carl filed a motion for reconsideration on the same day the order reducing his alimony was filed; in it, for the first time, Carl asserted that the circuit court erred in not making the alimony reduction retroactive to the date he filed his motion to reduce his alimony obligation. This motion was not ruled on by the circuit court and was deemed denied, and Carl timely filed his notice of appeal to this court.

Domestic-relations cases are reviewed de novo, and a circuit court's finding of fact will not be reversed unless it is clearly erroneous. *Richardson v. Richardson*, 2023 Ark. App. 279. A circuit court's decision regarding alimony is a matter that lies within its sound discretion and will not be reversed on appeal absent an abuse of that discretion; an abuse of discretion is discretion exercised thoughtlessly and without due consideration. *Id.* Modification of an award of alimony must be based on a material change in circumstances of the parties, and the party seeking modification bears the burden of proving such a change.

*Id.* Changes in circumstances are not material if they were contemplated at the time of the original award of alimony. *Id.* The primary factors to be considered in making or changing an award of alimony are the need of one spouse and the ability of the other spouse to pay; secondary factors that may be considered include the financial circumstances of both parties, the couple's past standard of living, the amount and nature of the parties' current and anticipated incomes, the extent and nature of each party's resources and assets, the amount of income of each that is spendable, the health conditions and medical needs of each party, the duration of the marriage, the amount of child support, and the earning ability and capacity of each party. *Id.* The circuit court is in the best position to view the needs of the parties in connection with an alimony award. *Id.*

Carl argues that the circuit court should have terminated his alimony obligation to Karen; alternatively, he contends that the \$500 a month reduction in his alimony obligation was not sufficient. In support of these arguments, he reasons that he has paid \$378,000 in alimony since the divorce; Karen does not work; she lives in a home that she has paid off; and she lives on monthly Social Security payments of \$870.70 and withdrawals from her divorce-settlement annuities. He points to the fact that he had to retire because he had bladder cancer; he relies on his monthly Social Security of \$1995 and withdrawals from his divorce-settlement annuities to live; and he has to make withdrawals of \$20,000 a year from his annuities to help make his monthly alimony payments of \$2500. He also notes that he and Karen have roughly the same amount of annuities and cash and that Karen has a monthly shortfall of only approximately \$565 between her monthly expenses and her

income, while his shortfall is \$2176 a month, which he is required to make up with additional annuity withdrawals. He adds that he also has a \$909 monthly house payment, while Karen has paid off her house, and that Karen has not explored the option of selling the quilts she makes as a hobby as an alternate stream of income for her.

We hold that the circuit court did not abuse its discretion in declining to terminate alimony and instead decreasing it from \$2500 to \$2000 a month. Karen was not working at the time of the dissolution of the parties' thirty-three-year marriage, and her testimony at the modification hearing revealed that she was not working at the present time because she has serious medical issues that prevent her from doing so, including cardiac issues, high blood pressure, and diabetes complications. Carl testified that he and his new wife travel; they have purchased new furniture, including two white leather couches totaling \$7,000, using money from his annuities; and he pays the \$909 monthly payment on an outstanding \$120,000 mortgage on the larger house he and his second wife jointly own, even though they had previously lived in a house that had no mortgage outstanding. Carl also receives \$3100 in annual rent on a forty-acre farm he inherited from his mother. Karen testified that she had estimated her expenses at the low end of the scale at \$1435.65, and that her household expenses would sometimes range higher than what she listed. She stated that she relies on her alimony to live; that she had made it a point to live within those means; that she does not travel or eat out or take vacations; that she does not go anywhere or do anything, she just stays home; and that she feels like she has to justify every penny that she spends. When

asked why she does not sell her quilts as a source of income, Karen stated that it is not easy to sell a quilt.

In decreasing Carl's alimony obligation from \$2500 to \$2000 a month, the circuit court found that circumstances had changed: both Carl and Karen are in their retirement years, both are now receiving Social Security, and both had whittled away their annuities over time, although they both still retained significant assets. However, the circuit court stated that it still had to take into consideration the length of the marriage and the fact that when it awarded lifetime alimony in 2010, it would not have intended for it to terminate except on death or remarriage. The circuit court found that while Carl's ability to pay had diminished, Karen's need for alimony had not, and it reduced his alimony obligation by \$500 a month.

Carl appears to fault Karen for being frugal with her money, not making extravagant expenditures, and living within her means as well as living in a mortgage-free house while he was still making \$909 monthly payments on a \$120,000 mortgage. Carl has seen fit to spend his annuity moneys on things such as a larger house and travel with his new wife but believes that he should no longer have to expend money to pay Karen permanent alimony. Given our standard of review, we cannot agree. The purpose of alimony is to rectify the economic imbalance in earning power and standard of living in light of the particular facts of each case. *Gould v. Gould*, 2023 Ark. App. 118, 662 S.W.3d 676. The circuit court recognized the economic imbalance between the parties' earning power when it awarded permanent alimony at the time of divorce. Karen had been a stay-at-home mom during much of the

thirty-three-year marriage, while Carl was working as a pharmacist, and the parties had grown accustomed to a certain standard of living. The circuit court realized that Carl's ability to pay alimony had decreased with his retirement but noted that Karen's needs had not changed; while the circuit court was unwilling to terminate Karen's alimony, it did acknowledge the decrease in Carl's ability to pay and reduced the alimony obligation by \$500 a month accordingly. The circuit court properly considered the alimony factors and recognized Carl's decreased ability to pay while still recognizing Karen's need for alimony; therefore, we cannot say that the decision to decrease alimony but not terminate it was an abuse of discretion.

Carl's last argument is that the circuit court erred in failing to make the reduction in alimony retroactive to the date of the filing of his petition to modify alimony. Carl did not request that any alimony reduction be made retroactive until he filed his motion for reconsideration in which he asserted that the circuit court should have made the reduction retroactive to the date of the filing of his motion to modify alimony. He cites *Honeycutt v. Honeycutt*, 2017 Ark. App. 113, 516 S.W.3d 750, for the proposition that the circuit court in that case made the modification of alimony retroactive to the date of the filing of the motion. Alimony must be determined in light of the particular facts of each case. *Becker v. Becker*, 2019 Ark. App. 230, 575 S.W.3d 608. Unlike Arkansas Code Annotated section 9-14-107(d) (Supp. 2023), the statutory provision providing that child-support modification orders, unless otherwise ordered by the court, shall be effective as of the date the motion is served on the other party, modification of alimony has no such provision. We cannot say it

was an abuse of discretion for the circuit court to not make the reduction in alimony retroactive to the date Carl filed his motion.

Affirmed.

THYER and WOOD, JJ., agree.

*Rhoads & Armstrong, PLLC*, by: *Johnnie Emberton Rhoads*, for appellant.

*Crown Law*, by: *Matt Kezhaya*, for appellee.