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Legislative Report: Changes To Spousal Support Statute

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Contained within House Bill 461 (129th General Assembly), the Collaborative Law Act¹ was a modification to R.C. 3105.18, which addressed some of the consequences of the ruling of the Ohio Supreme Court in *Mandelbaum v. Mandelbaum* (2009), 121 Ohio St.3d 433.² R.C. 3105.18(F) previously provided that a change in circumstances of a party, for the purposes of modification of a decree, "includes, but is not limited to, any increases or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses." This section was amended to include the following language to R.C. 3105.18(F):

or other changed circumstances so long as both of the following apply:

(a) The change in circumstances is substantial and makes the existing award no longer reasonable and appropriate

(b) The change in circumstances was not taken into account by the parties or the court as a basis for the existing award when it was established or last modified, whether or not the change in circumstances was foreseeable.

New R.C. 3105.18(F)(1)(a) reiterates the rule of *Mandelbaum* that a change in circumstance must be substantial in nature, but adds the criterion that the substantiality of the change must make the existing award no longer "reasonable and appropriate." New R.C. 3105.18(F)(1)(b) goes further in addressing the jurisdictional consequences of *Mandelbaum*, in that the asserted change in circumstances must be shown to have not been taken into account by the parties or the court as a basis for the existing award. Importantly, the statute addresses the issue of the foreseeability of the change in circumstance, by providing that the change in circumstance may be considered regardless of whether or not it was foreseeable. Therefore, so long as the change was not the basis for the existing order, its foreseeability is not a factor.³

Another paragraph was also added, R.C. 3105.18(F)(2), which provides:

(2) In determining whether to modify an existing order for spousal support, the court shall consider any purpose expressed in the initial order or award and enforce any voluntary agreement of the parties. Absent an agreement of the parties, the court shall not modify the continuing jurisdiction of the court as contained in the original decree.

This provision appeared to be directed at some cases interpreting *Mandelbaum*, especially in the Tenth District,⁴ as precluding jurisdiction for modification of spousal support when parties incorporated triggering events in agreements, such as emancipation of a minor child.

Interestingly, the General Assembly added a Section 4 to the bill which provided a further gloss on its intentions:

The proposed changes made by this act to section 3105.18 of the Revised Code are intended to abrogate *Mandelbaum v. Mandelbaum* (2009), 121 Ohio St.3d 433. Specifically, the proposed changes clarify (1) that a "change in circumstances" must be "substantial" so as to make the existing award no longer reasonable or appropriate; and (2) that the "change in circumstances" must be circumstances that were not taken into account by the parties or the court when the award was set or last modified, whether or not such circumstances were otherwise contemplated or foreseeable. The proposed changes are also intended to specify that other events may constitute a change in circumstances and to give courts guidance so that courts must consider any purpose expressed in the initial order or award, enforce any voluntary agreement of the parties, and only modify the continuing jurisdiction of the court as contained in the original decree if the parties agree.

As a result of this legislation, the foreseeability of a change as a bar to modification jurisdiction should be a dead issue.

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Footnotes

- 1 Sponsored by domestic relations attorney, Rep. Gerald Stebelton, the Act is effective March 20, 2013.
- 2 See *Foreseeability and Jurisdiction in Spousal Support Cases*, Domestic Relations Journal of Ohio, Vol. 24, Issue 3.
- 3 See *Burkart v. Burkart*, 191 Ohio App. 3d 169, 2010-Ohio-5363, 945 N.E.2d (10th Dist. Franklin County 2010) for a discussion of foreseeability of a change in circumstances as a jurisdictional bar to modification.
- 4 See, e.g., *Piliero v. Piliero*, 2011-Ohio-4364, 2011 WL 3843936 (10th Dist. Franklin County 2011).

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