

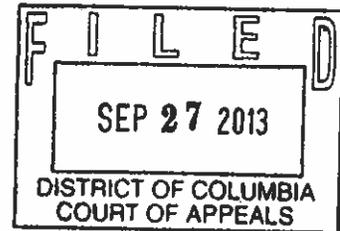
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 12-FM-0814

SHANITA VERNER, APPELLANT,

v.

LEVI VERNER, APPELLEE.



Appeal from the Superior Court of the District of Columbia
Family Division
(DRB-1260-11)

(Hon. Alfred S. Irving, Trial Judge)

(Submitted June 6, 2013)

Decided September 27, 2013)

Before BLACKBURNE-RIGSBY and MCLEESE, *Associate Judges*, and
NEBEKER, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Shanita Verner seeks review of the trial court's order temporarily suspending appellee Levi Verner's obligation to pay child support until the parties no longer reside in the same home. We affirm.

I.

The parties divorced in 2011 and entered into a marital settlement agreement that was incorporated but not merged into a judgment of absolute divorce. The agreement required Mr. Verner to pay monthly child support for each of the parties' five children. The agreement also provided that "[t]he marital home of the parties . . . shall be[] occupied by both parties until such reasonable time [as Mr. Verner] either pays [Ms. Verner] \$200,000 or buys [Ms. Verner] a house in either or both parties['] names and makes payments on the [h]ouse equaling \$200,000." Despite this provision, the parties continued to live in the same residence, and Mr. Verner remained the sole financial provider for the children. Mr. Verner fell

behind in his child-support payments, and Ms. Verner filed a motion to enforce the settlement agreement. Mr. Verner subsequently filed a motion to modify child support. In April 2012, the trial court held a support hearing, in part concerning Mr. Verner's failure to comply with his child-support obligation. Because the parties were still living in the same home, and Mr. Verner was the sole financial provider for the children, the trial court temporarily suspended Mr. Verner's child-support obligation until the parties' living arrangements became consistent with what was contemplated by the parties' settlement agreement. The trial court subsequently denied Ms. Verner's motion to reconsider.

Ms. Verner argues on appeal that the trial court erroneously suspended Mr. Verner's child-support obligation, because there was no substantial and material change in the parties' circumstances. Specifically, Ms. Verner appears to argue that the circumstances did not change because the parties are in the same position they were in when the court entered a judgment of absolute divorce. We find no error.

II.

"The standard for granting a modification to child support specified in a settlement agreement depends on whether the agreement was merged into the court's judgment, or incorporated by reference." *Duffy v. Duffy*, 881 A.2d 630, 638 (D.C. 2005). A trial court may modify an incorporated agreement if the party seeking modification shows "(1) a change in circumstances which was unforeseen at the time the agreement was entered and (2) that the change is both substantial and material to the welfare and best interests of the children." *Cooper v. Cooper*, 472 A.2d 878, 880 (D.C. 1984) (per curiam). "Whether there has been a substantial and material change in circumstances is a question committed to the sound discretion of the trial court, and its decision in the matter will not be reversed on appeal without a clear showing of abuse of discretion." *Burnette v. Void*, 509 A.2d 606, 608 (D.C. 1986).

We find no abuse of discretion in the conclusion that the parties' circumstances were sufficiently different from those contemplated by the settlement agreement as to permit modification of the child-support agreement. We are not persuaded by Ms. Verner's argument that, in the literal sense, circumstances did not change because the parties continued to live together, as they did when the parties entered into the settlement agreement. The agreement requiring Mr. Verner to pay child support clearly contemplated that the marital

home would no longer be occupied by both parties once certain conditions were met. Moreover, the agreement contemplated that the parties would live apart within a "reasonable time."¹ At the time the trial court ruled, however, the parties and their children still lived in the same residence and Mr. Verner was the sole financial provider for the family. We see no basis to reverse the trial court's ruling that, during the time that Mr. Verner resided with and provided financially for the family, the child-support agreement was "unworkable." We conclude that the trial court did not abuse its discretion by temporarily suspending Mr. Verner's child-support obligation until the parties no longer occupied the same home and Mr. Verner was not directly providing financial support for the children.

Ms. Verner also argues that the trial court applied the wrong legal standard by granting modification even though it stated at the end of the hearing that it was not finding changed circumstances. We find no basis for reversal. Despite the trial court's comment at the end of the hearing, the trial court in substance found that the circumstances had changed because, contrary to the expectation at the time of the settlement agreement, Mr. Verner and Ms. Verner were not living separately reasonably soon after the agreement. We also note that the trial court identified the proper standard at the beginning of the hearing.

The order of the trial court is therefore

Affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

¹ Mr. Verner explained in the trial court that the delay in fulfilling this provision of the agreement was caused by unresolved issues in probate court regarding the marital home.

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