

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-545

MAY TERM, 2003

Anamaria Stori	}	APPEALED FROM:
	}	
	}	Bennington Family Court
	}	
v.	}	
	}	DOCKET No.153-5-99 Bndm
Matthias Stori	}	
	}	Trial Judge: John P. Wesley
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Husband appeals from a family court order denying his motion to modify spousal maintenance and granting wife' s motion for contempt and attorney' s fees. Although husband raises various claims of error, we affirm on the ground that he failed to provide an adequate record on appeal.

The parties were divorced in June 2000 after a thirty year marriage. The terms of the final order were based on an agreement between the parties. Both parties were represented by counsel. The agreement provided for the sale of several parcels of improved real estate, including a bed and breakfast and a restaurant business, and a division of the proceeds. It also provided that, upon the sale of the bed and breakfast, husband would become obligated to pay wife spousal maintenance of \$2500 per month, and that sale of the restaurant would constitute grounds for review and modification of the spousal maintenance award. The bed and breakfast was sold in January 2001, and conflicts arose thereafter concerning husband' s maintenance payments. Wife moved for contempt based on non-payment and violation of certain discovery orders, and husband moved to modify the maintenance award based principally on his claim that income from the restaurant had declined. Following an evidentiary hearing in which both parties were represented by counsel, the court denied husband' s motion, finding that he had failed to show a real, substantial, and unanticipated change of circumstances. 15 V.S.A. §758. The court granted wife' s motion, ordering husband to pay arrearages and attorney' s fees. Husband has appealed pro se.

A party seeking to modify spousal maintenance has the burden of demonstrating a real, substantial, and unanticipated change of circumstances. 15 V.S.A. §758; Gil v. Gil, 151 Vt. 598, 599 (1989). A party seeking to reverse a trial court' s decision on a motion to modify has the burden of demonstrating error in the challenged rulings or findings, and this Court will not disturb the trial court' s findings unless, taking the evidence in the light most favorable to the prevailing party and excluding modifying evidence, they are clearly erroneous. Cliche v. Cliche, 140 Vt. 540, 541 (1982).

When appellate claims turn on the sufficiency of the evidence to support a finding or conclusion, the appellant must provide an evidentiary record sufficient to evaluate the claims. See V.R.A.P. 10(b)(2) (" If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion."). Failure to supply the necessary transcript will result in a waiver of the claim. As we have explained: " It is the burden of the party challenging a ruling to furnish the reviewing court a transcript of the proceeding involved. . . . To omit to incorporate into the record on appeal the transcript of applicable testimony and proceedings without authorization is to forfeit review of questions requiring reference to the transcript." Appliance Acceptance Co. v. Stevens, 121 Vt. 484, 488 (1960) (quoted with

approval in State v. Gadreault, 171 Vt. 534, 538 (2000) (mem.)).

Although husband' s claims on appeal are not stated with clarity or precision, and his pro se briefing falls well short of the standards set forth in V.R.A.P. 28(a), it is sufficiently clear that his argument turns on the adequacy of the evidence to support the court' s finding that he failed to show a real, substantial and unanticipated change of circumstances that would warrant a modification of spousal support. Husband' s argument rests, in turn, on a variety of factual claims, including an assertion that wife intentionally obstructed the sale of the restaurant through various means, and that the evidence failed to support the court' s findings concerning declining revenues at the restaurant, unreported cash withdrawals, and various inheritances, gifts, and purchases by husband.

We are precluded from reviewing these fact-based claims, however, by husband' s failure to file a transcript of the evidentiary hearing on the motions. See id. Husband was alerted to the problem by wife' s motion to dismiss the appeal based on the absence of transcripts necessary for review. Husband opposed the motion, claiming that transcripts were beyond his financial means and unnecessary. This Court, in response, denied the motion to dismiss in an entry order which stated: " Appellant has elected to proceed at his own risk without transcripts of the underlying proceedings." (Emphasis added). That risk has now been realized. Without a record of the proceedings below, we cannot assess the merits of husband' s various claims challenging the court' s findings, which findings in turn underlie the conclusion that husband failed to show a real, substantial and unanticipated change of circumstances. Accordingly, there is no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned