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Unrealized goals may justify spousal support modification

By Aaron Dishon and Douglas A. Hatherley

Divorce cases often do not end upon entry of a judgment of dissolution of marriage. A “final” spousal support order — as an order made pursuant to a judgment for dissolution of marriage is often termed — is not truly final. Unless the court’s jurisdiction has terminated, or the parties agree by stipulation that spousal support is non-modifiable, a spousal support order is subject to modification upon a showing of changed circumstances. When a family law litigant — dissatisfied with the existing orders for spousal support — requests modification of the same, the threshold issue is whether a change of circumstances does, in fact, exist. Absent evidence of a change of circumstances, an order modifying spousal support will be overturned for abuse of discretion. So what exactly qualifies as a change of circumstances, and to what standard is a party seeking to modify support held? A recently-published opinion, *In re Marriage of Khera and Sameer*, 206 Cal. App. 4th 1464 (2012), illustrates the requirements of the “change of circumstances” rule for modifying spousal support.

Madhu Sameer (“Wife”) and Sameer Khera (“Husband”) were married for over 17 years. Pursuant to Family Code Section 4336, marriages exceeding 10 years from date of marriage to date of separation are presumed to be of long duration, a finding which impacts the length of spousal support orders and the court’s jurisdiction to modify the same. After the divorce proceedings were initiated, the parties eventually stipulated, among other things, to spousal support orders that were later incorporated into a judgment. Pursuant to said judgment, Husband was ordered to pay Wife monthly spousal support in the amount of \$2,650 commencing June 1, 2007. Spousal support payable to Wife would decrease, or “step-down,” annually until eventually reduced to zero. On June 1, 2010, spousal support would “be reduced to zero, unless, before that date, [Wife] files a motion to have spousal support continued and shows good cause as to why the Court should order spousal support to be continued.” Elsewhere in the judgment, it was implied that Wife would complete her

Master’s degree in social work (MSW) and be able to support herself by the date spousal support payments were set to expire.

When Wife had not yet become self-supporting as of March 24, 2010, she filed an order to show cause requesting, among other things, that the trial court order increased spousal support extending “beyond June 1, 2010 until that time that Wife can become

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self-supporting.” In determining whether Wife met the requirements of the changed circumstances rule, the court considered Wife’s argument that “unrealized expectations” — the failure of the underlying assumption that Wife would become self-supporting by June 1, 2010 — warranted a modification of support.

Case law has established that a change in circumstances may be in the form of “unrealized expectations” in the supported spouse becoming self-supporting by a specific date. This argument, however, requires the supported spouse to provide evidence that he or she made reasonable efforts to become self-supporting, but was unable to do so. In *Khera and Sameer*, the trial court found that Wife failed to present such evidence and — for lack of changed circumstances — denied her request to extend spousal support.

Instead of making appropriate efforts at obtaining employment and becoming self-supporting, Wife enrolled fulltime in a doctoral program in clinical psychology. Wife’s voluntary decision to pursue her Ph.D. in clinical psychology — rather than seeking fulltime paid employment by June 1, 2010 — did not amount to reasonable efforts to become self-supporting, and therefore did not qualify as a change in circumstances in the form of “unrealized expectations. Had Wife actively sought work, and still been unable to find the same at a salary sufficient to

become self-supporting, perhaps then Wife could have pursued the doctoral degree. As recognized by the court, Wife could have demonstrated unrealized expectations by showing that despite her diligent efforts, she was unable to timely complete her MSW degree, unable to obtain fulltime work as a social worker, or unable to find employment at a salary sufficient to become self-supporting. Wife did not present evidence on any of these scenarios.

The take-away from *Khera and Sameer* is that a supported spouse must make efforts to become self-supporting, and present evidence of the same, when seeking a modification and/or extension of spousal support on grounds of “unrealized expectations.” While Wife blamed her failure to become self-supporting on her ostensibly declining health and California’s slumping economy, she did not present evidence showing the same. In addition, Wife could have demonstrated changed circumstances by presenting evidence that Husband’s ability to pay support had increased significantly since entry of judgment, or that Wife’s debt had increased significantly despite her reasonable efforts to become self-supporting. Proof of any of the foregoing situations would have allowed Wife to demonstrate a change in circumstances. In failing to make an appropriate evidentiary showing, Wife undermined her ability to modify spousal support.

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The opinion also contains a noteworthy discussion regarding the step-down spousal support order contained in the parties' judgment, termed by this court as a "Richmond-type" order. The opinion defines a Richmond order — denominated after the opinion of *In re Marriage of Richmond*, Cal. App. 3d 352 (1980) — as "[a]n order providing for contingent termination of spousal support on a specific date unless, before that time, the supported spouse brings a motion to modify for good cause." Effectively, a Richmond order provides the supported spouse with a target date to become self-supporting and shifts the burden to that party to extend support by showing that unforeseen or changed circumstances merit a reconsideration of the duration of support. The reason behind this burden-shift is found in the Family Code's policy that supported spouses should make efforts to become self-supporting. Richmond orders are made in hopes that the supported spouse will not delay in making such efforts.

As previously discussed, the judgment in *Khera and Sameer* provided that spousal support would be reduced to zero June 1, 2010, unless Wife first filed a motion for good cause to extend the duration of sup-

port. This is not exactly a *Richmond* order. A true *Richmond* order not only ends the supporting spouse's obligation to make support payments, it also terminates the trial court's jurisdiction to award spousal support once the termination date has passed. Here, the judgment was silent as to whether the court would retain jurisdiction over the issue of spousal support after support payments ceased. In a cursory mention of this issue, the reviewing court rejected Wife's claim that the trial court should have reserved jurisdiction over spousal support when it denied Wife's request for modification of support. The reviewing court reasoned that the trial court had no authority to modify the judgment in any respect because there was no change of circumstances.

Technically this is an accurate statement of the law, however, this portion of the opinion is misleading insofar as it appears to suggest that a step-down order reducing spousal support to zero is equivalent to one terminating the court's jurisdiction over the issue of spousal support. It is not. The difference between an order that simply reduces support to zero and order terminating jurisdiction is significant and was described in one case,

In re Marriage of Schaffer (Schaffer II), 69 Cal. App. 4th 801, 812 n.7 (1999), as "the difference between lightning bug and lightning." This is because a party such as Wife in *Khera and Sameer* could still — upon a showing of changed circumstances — request a modification of spousal support after the step-down to zero support. A terminating order forever prevents the court from acting on the issue of support.

Absent a stipulation to the contrary, the court retains jurisdiction indefinitely over the issue of spousal support in long-term marriages. At least one case, *In re Marriage of West*, 152 Cal. App. 4th 240 (2007), holds that an order reducing support to zero does not terminate the court's jurisdiction over the issue of spousal support. As such, the trial court should still have jurisdiction to modify support upon a showing of changed circumstances. In footnote 4 of *Khera and Sameer*, the reviewing court even recognized that the order from which Wife appealed was "not an order for termination." Such confusion is unnecessary, however, as parties and courts are advised to expressly mention whether a reservation of jurisdiction over the issue of spousal support is intended.