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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JAMES H. WEATHERSBEE,
Plaintiff,

CIVIL ACTION NO 95-793

v.

ORDER

YASUKO TAMAKI WEATHERSBEE,
Defendant.

On October 21, 1997 in Courtroom A, this matter came before this Court on Defendant's Motion for an Order to Show Cause re Contempt for Non-Payment of Spousal Support and Plaintiffs Motion to Modify Spousal Support. After considering arguments of counsel and reviewing the record, this Court now renders its ruling on Plaintiffs request for a retroactive modification of spousal support.

A. Facts and Procedural History

On December 1, 1995, this Court issued a decree granting **Petitioner/Plaintiff's** petition for dissolution of marriage, incorporating the terms of a marital settlement agreement executed by the parties on November 16, 1995. Plaintiff agrees to pay spousal support to Defendant in the amount of \$1,500 per

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1 month for 10 years commencing on December 1, 1995 and ending on November 1, 2005. Def.'s Exhibit
2 A at 6.

3 On June 10, 1997, Defendant filed her Motion For Order To Show Cause with a supporting
4 declaration alleging that Plaintiff has not paid any spousal support since December 1, 1995.' Def.'s Decl.
5 At 1. On July 28, 1997, Plaintiff filed his Notice and Motion For Order **Modifying** Spousal Support. On
6 June 29, 1997, after a hearing on both Defendant and Plaintiffs motions, this Court ordered, *inter alia*,
7 Plaintiff to file his memorandum of law supporting Plaintiffs request for a retroactive modification of
8 spousal support and Defendant to file a response.

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10 " **B. This Court May Revise A Decree As to Spousal Support.**

11 As far as this Court is aware, the issue of retroactive modification of an order of spousal support
12 is one of first impression in the Commonwealth. This Court clearly has express statutory authority to
13 revise "any decree as to custody, or support of minor children or .of the parties . . . at any time upon
14 motion of either party and such notice, if any, as the Court deems justice requires." 8 CMC § 1311
15 (emphasis added.)

16 Neither party in this case questions this Court's authority under § 1311. However, they disagree
17 on this Court's exercise of that authority to modify retroactively a spousal support order. Plaintiff argues
18 for a broad construction of the language in § 1311 for the proposition that this Court can modify
19 retroactively a decree as it relates to spousal support. Plaintiffs Supplemental Memorandum Regarding
20 the Court's Authority To Modify a Divorce Decree (hereafter "Pl.'s Supp.") at 7.

21 While Plaintiff cites cases to demonstrate that Plaintiffs inability to pay spousal support pursuant
22 to the divorce decree is not a bar to modify such support, he cites no cases to support its position that
23 retroactive modification is proper in this case. Instead, Plaintiff argues, without citing any supporting
24 authority, that "this Court has the power and duty to examine the circumstances existing at the time of
25 the request for modification of the decree and determine whether, on the evidence then existing, a prior
26 obligation is to be excused or modified retroactively." Pl.'s Supp. at 7.

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At the October 21, 1997 hearing, the parties orally stipulated that Plaintiff has paid \$8,638.68 to
Defendant, leaving a balance of \$21, 361.32 that Plaintiff owes Defendant as of July 31, 1997.

1 Notwithstanding Plaintiffs assertion, this Court, pursuant to § 1311, has the power to **modify**
2 prospectively a support decree from the date a motion to **modify** is filed. However, justice requires that
3 the Court's power and duty should not be extended to include a determination whether a prior obligation
4 is to be excused or modified retroactively.

5
6 **C. Justice Precludes A Construction To Permit Retroactive Modification.**

7 Under § 1311 the Court must rely on its equitable powers to revise a spousal support order "as
8 the Court deems justice requires." 8 CMC § 1311. See also *Misinonile v. Misinonile*, 645 A.2d 1024 at
9 1027 (Conn. App. 1994) ("In family matters, the court exercises its equitable powers, and the balancing
10 of equities is a matter that falls within its discretion."); *Oneglia v. Oneglia*, 540 A.2d 713 at 716 (Conn.
11 App. 1988) ("[E]quitable remedies are not bound by formula but are molded to the needs of justice.").

12 While it might appear that it lies within the Court's discretion whether to grant Plaintiffs request,
13 there are compelling reasons for the Court's reluctance to construe § 1311 as permitting retroactive
14 modification, absent express legislative authorization. These reasons were well articulated by the
15 Supreme Court of Connecticut in *Sanchione v. Sanchione*, 378 A.2d 522 (Conn. 1977).²

16 The first, and most persuasive, reason is to prevent hardship to support recipients by protecting
17 their expectations and enabling them to rely upon the continuing support obligation of the paying spouse.
18 Defendant states that the reason she agreed to the Marital Settlement Agreement was so that she could be
19 assured of some income until she reached the age of retirement. (Def.'s Decl. In Supp. Of Mot. To Show
20 Cause at unnumbered second page.) Defendant clearly has a legal expectation that she will be receiving
21 support income and that this Court has been shown no reason to doubt that she relies on the continuing
22 support obligation of the Plaintiff

23 The latter conclusion is supported by the fact that Defendant has moved this Court to order
24 Plaintiff to show cause why this Court should not hold him in contempt for failing to pay spousal support.
25 Thus, a denial of retroactive modification would prevent hardship to Defendant.

26
27 ² Connecticut and many other jurisdictions refuse to allow retroactive modification of an alimony
28 obligation. For further discussion, see Clark, *The Law of Domestic Relations in the United States*, 2d ed.
Vol. 2 § 17.6, p. 274 and 6 A.L.R.2d 1277-1334.

1 Another reason is that a modifiable spousal support order is not entitled to full faith and credit in
2 another state's courts unless the support arrearage is reduced to a final judgment. This lends support to
3 the proposition that spousal support arrearages should be treated as a final judgment on the amount owed
4 and, therefore, entitled to full faith and credit. See also Sanchione, supra at 526 ("[U]npaid alimony
5 installments are in the nature of a final judgment which cannot be retroactively disturbed, and the court's
6 right to modify the alimony decree therefore extends only to the executory portion of the order, i.e., to
7 payments to become due in the future."); Hendrx v. Stone, 412 S.E.2d 536 at 537 (Ga. 1992) ("[A]s
8 each installment accrues, it is, in essence a final judgment for a fixed sum and, upon execution, becomes a
9 lien on the payor's property.")

10 Moreover, retroactive modification of a valid support obligation would undermine the finality of
11 the judgment obtained as to each accrued but unpaid installment. Accordingly, in the absence of express
12 legislative authorization, this Court does not construe § 1311 as authorizing retroactive modification of a
13 valid spousal support obligation.

14 For the foregoing reasons, Plaintiffs request for retroactive modification is hereby **DENIED**. The
15 hearing regarding evidence on prospective support modification and payment of arrearages shall be
16 continued to October 29, 1997 at 9:00 a.m.

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18 **SO ORDERED** this 28 day of October, 1997

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22 VIRGINIA SABLAN ONERHEIM
23 Associate Judge
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