

NEBRASKA SUPREME COURT

Grothen v. Grothen

308 Neb. 28 (2020) · No. No. S-19-472 · Decided December 31, 2020

SUMMARY

The Nebraska Supreme Court held that an alimony provision incorporated into a property settlement agreement may be modified under the “good cause” standard in Neb. Rev. Stat. § 42-365 unless the parties expressly precluded or limited modification under § 42-366(7). The court rejected the Court of Appeals’ application of a fraud-or-gross-inequity standard but affirmed the denial of modification because the evidence did not establish a material and substantial change in circumstances warranting relief. The court therefore affirmed the Court of Appeals’ judgment affirming the district court.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	December 31, 2020
DOCKET	No. S-19-472
DISPOSITION	affirmed
PROCEDURAL POSTURE	Timothy sought further review of the Nebraska Court of Appeals' decision affirming the Adams County District Court's denial of his application to modify his alimony obligation and its award of attorney fees to Martha.
STANDARD OF REVIEW	Statutory interpretation is reviewed independently as a question of law. Modification of a dissolution decree is entrusted to the trial court's discretion and is reviewed de novo on the record, with affirmance absent an abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Timothy Ray Grothen v. Martha Sue Grothen

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QUESTIONS PRESENTED

1. Whether an alimony provision agreed to as part of a property settlement agreement may be modified under the statutory good-cause standard or only upon a showing of fraud or gross inequity.
2. Whether the district court abused its discretion in finding that Timothy failed to show a material and substantial change in circumstances justifying modification of alimony.
3. Whether alimony determinations under Nebraska law must focus exclusively on the parties' income rather than their broader relative economic circumstances.

HOLDINGS

1. When the parties have not expressly precluded or limited modification under Neb. Rev. Stat. § 42-366(7), an alimony provision agreed to as part of a property settlement agreement may be modified for good cause under § 42-365; the fraud-or-gross-inequity standard applicable to agreed property provisions does not govern modification of alimony.
2. Good cause under § 42-365 means a material and substantial change in circumstances, assessed according to the circumstances of each case; changes contemplated by the parties at the time of the decree or resulting merely from the passage of time do not justify modification.
3. Alimony is not determined solely by income; the court may consider income, earning capacity, assets and other relevant aspects of the parties' relative economic circumstances, as well as the general equities of the situation.
4. The district court did not abuse its discretion in denying modification because Timothy failed to establish a material and substantial change in circumstances warranting relief under § 42-365.

KEY QUOTATIONS

“We conclude that where the parties have not expressly precluded or limited modification of alimony pursuant to § 42-366(7), an alimony provision that was agreed to by the parties as part of a property settlement agreement may later be modified in accordance with § 42-365.” (308 Neb. at 42)

“Instead, income is an important, but not an exclusive, consideration, and alimony should be based not only on income, but also on the general equities of the situation considering the relative economic circumstances of the parties.” (308 Neb. at 45)

FACTUAL BACKGROUND

The parties' 2012 dissolution decree incorporated their property settlement agreement, under which Timothy received most of the marital estate and agreed to pay Martha \$600,000 plus \$2,500 per month in alimony for 15 years. In 2018, Timothy sought modification based primarily on decreased farm income, including a reported farm loss compared with substantial farm income in 2011. By 2018, however, Timothy's net worth had increased to approximately \$1.82 million, largely consisting of farmland, while Martha had medical issues, limited

employment options, and reduced financial circumstances. The district court denied modification, finding that fluctuations in farm income were foreseeable and that the parties' relative financial circumstances did not justify changing the alimony obligation.

PROCEDURAL HISTORY

The district court denied Timothy's application to modify alimony, finding no material change in circumstances and determining that his failure to pay alimony was willful; it also awarded Martha attorney fees and costs. The Court of Appeals affirmed, applying a gross-inequity standard to the agreed alimony provision and concluding that the district court nevertheless reached the correct result. The Nebraska Supreme Court granted further review, held that the Court of Appeals applied the wrong standard, but affirmed because the district court applied the correct good-cause standard and did not abuse its discretion in denying modification.

DISPOSITION

affirmed

CASES CITED

- Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020)
- Jones v. Jones, 305 Neb. 615, 941 N.W.2d 501 (2020)
- Metcalf v. Metcalf, 278 Neb. 258, 769 N.W.2d 386 (2009)
- Carlson v. Carlson, 299 Neb. 526, 909 N.W.2d 351 (2018)
- Williams v. Williams, 119 Neb. 8, 226 N.W. 798 (1929)
- Archer Daniels Midland Co. v. State, 290 Neb. 780, 861 N.W.2d 733 (2015)
- Euler v. Euler, 207 Neb. 4, 295 N.W.2d 397 (1980)
- Cooper v. Cooper, 219 Neb. 64, 361 N.W.2d 202 (1985)
- Desjardins v. Desjardins, 239 Neb. 878, 479 N.W.2d 451 (1992)
- Reinsch v. Reinsch, 259 Neb. 564, 611 N.W.2d 86 (2000)
- Ryder v. Ryder, 290 Neb. 648, 861 N.W.2d 449 (2015)
- Whitesides v. Whitesides, 290 Neb. 116, 858 N.W.2d 858 (2015)
- Peter v. Peter, 262 Neb. 1017, 637 N.W.2d 865 (2002)
- Davis v. Davis, 265 Neb. 790, 660 N.W.2d 162 (2003)
- Gruber v. Gruber, 261 Neb. 914, 626 N.W.2d 582 (2001)
- Strunk v. Chromy-Strunk, 270 Neb. 917, 708 N.W.2d 821 (2006)
- Hotz v. Hotz, 301 Neb. 102, 917 N.W.2d 467 (2018)
- Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019)
- Binder v. Binder, 291 Neb. 255, 864 N.W.2d 689 (2015)
- Collett v. Collett, 270 Neb. 722, 707 N.W.2d 769 (2005)
- Grothen v. Grothen, 28 Neb. App. 505, 945 N.W.2d 902 (2020)

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