STATE OF MICHIGAN

COURT OF APPEALS

VICTOR VINCENT VALENTINE, Plaintiff-Appellee,	UNPUBLISHED September 18, 2014
v	No. 316236 Kalamazoo Circuit Court
SHARON L. VALENTINE, Defendant-Appellant.	LC No. 1980-002751-DM

Before: SHAPIRO, P.J., and WHITBECK and STEPHENS, JJ.

PER CURIAM.

Defendant Sharon Valentine appeals by delayed leave granted[1] the trial court order that granted plaintiff Victor Valentine's motion to modify spousal support.

This case concerns spousal support paid by Victor to Sharon beginning after the parties divorced in 1982. The spousal support arrangement was originally governed by the parties' marital separation agreement and subsequent judgment of divorce. The arrangement was modified in 1993 by a consent judgment stipulated to by the parties. In 2012, Victor filed a motion to modify the arrangement in the form of termination of his obligation to make any payments to Sharon. The trial court initially held that the 1982 arrangement was modifiable and ordered an evidentiary hearing to determine whether 1993 modifications should again be modified, in the form of termination. After evidentiary hearings, the trial court reversed its prior ruling, holding that the 1982 arrangement was nonmodifiable. Because the 1982 arrangement had provided that all spousal support payments were to cease on July 7, 1996, the court terminated Victor's alimony obligation.[2] The court also held that, even if the 1982 arrangement had been modifiable and, therefore, that the 1993 modification had taken effect, it would be "highly inequitable" to require Victor to continue paying spousal support. We find that the trial

[1] *Valentine v Valentine*, unpublished order of the Court of Appeals, entered January 2, 2014 (Docket No. 316236).

[2] Victor, who did not cease making alimony payments until 2012, did not seek reimbursement of alimony he paid after July 7, 1996; rather, he only sought to terminate his alimony obligation as of the date he filed his motion.

court erred by ruling that the 1982 arrangement was nonmodifiable. We also find that the court erred by ruling that, even under the terms of the 1993 modification, Victor's obligation should nonetheless be terminated, because the court failed to make the necessary determination of a change in circumstances. Accordingly, we reverse and remand for the trial court to determine if there has been a change of circumstances justifying modification of support and, if so, to determine the extent of that modification.

I. FACTS

A. DIVORCE

Sharon and Victor married on October 29, 1966. Four children were born during this marriage. The parties separated on April 9, 1980. On August 18, 1982, the parties entered into a marital separation agreement, pursuant to which Sharon received legal and physical custody of the parties' children. This agreement contained the following provisions regarding child and spousal support:

> *HUSBAND shall pay to WIFE the sum of $40,333 over a period of ten (10) years and one (1) month in equal installments of $333.33 commencing upon the first Friday following entry of Judgment in this matter*. Such payments shall be made through the Kalamazoo County Friend of the Court under existing Statute and Court Rule, as provided in any Judgment of Divorce entered pursuant to this Agreement. This obligation shall terminate on death of WIFE except for her death due to acts set forth in the provisions of Section 10.4 hereof, and shall survive death of HUSBAND or remarriage of WIFE.
>
> 5.2 Based upon HUSBAND's 1981 gross income of $770.00 per week, *HUSBAND shall pay to WIFE for the further support of WIFE and the four (4) minor children named herein the further sum of Four Hundred Dollars ($400.00) per week, through the Friend of the Court, in the same manner described above. Said amount shall be reduced by the sum of Eighty Two Dollars ($82.00) per week as each child reaches eighteen (18) years of age, and such support shall terminate upon death of either party but shall not terminate due to remarriage of WIFE, but shall terminate in full on July 7, 1996.*
>
> * * *
>
> 8.2 It is intended by both parties that the support payments provided herein are considered to be periodic payments for the support of the WIFE and minor children, taxable to the WIFE under IRC Sec. 215 and deductible to the HUSBAND under IRC Sec. 71, that the WIFE shall be entitled to the exemptions for the four (4) minor children. Any change in the tax effect of such payments, whether voluntary or involuntary, shall constitute a change in circumstances justifying a modification of any Judgment of Divorce herein and any subsequent Order of modification shall constitute an amendment of Sec. 5.1 and 5.2 hereof.
>
> [Emphasis added.]

On October 18, 1982, the trial court entered a judgment of divorce dissolving the parties' marriage. The judgment incorporated by reference the marital separation agreement "as merged herein" and contained the following alimony provisions:

> IT IS FURTHER ORDERED and ADJUDGED that *alimony in the amount of $477.00 per week, commencing the first Friday after entry of this Judgment, until July 7, 1996, shall be paid to the Defendant, SHARON L. VALENTINE, by the Plaintiff, VICTOR V. VALENTINE, through the Friend of the Court provided, however, that said payments shall be terminated upon the death, but not upon remarriage of the Defendant*.
>
> IT IS FURTHER ORDERED and ADJUDGED that said payments shall be subject to the provisions of the Marital Separation Agreement dated August 18, 1982. In the case of any conflict between this provision and that Agreement, that Agreement shall control.
>
> [Emphasis added.]

That same day, the trial court entered a "First Modification of Judgment of Divorce" at the request of the Friend of the Court. The modification substituted the following two paragraphs for the first paragraph of the provision entitled "ALIMONY" in the original divorce judgment:

> IT IS FURTHER ORDERED that commencing the first Friday after entry hereof, the Plaintiff, *VICTOR V. VALENTINE, shall pay to the Friend of the Court the sum of FOUR HUNDRED SEVENTY SEVEN and NO/100ths ($477.00) per week, and on each and every Friday thereafter, until July 7, 1996, for the support of the above-named wife, Defendant, SHARON VALENTINE, and for support of the minor children of the parties but the husband's obligation for the support of the wife shall terminate in the event of her death, but not upon her marriage, said sum to be adjusted downwards by EIGHTY-TWO and NO/100ths DOLLARS ($82.00) per week on the 18th birthday of each minor child listed above, and by SEVENTY-SEVEN AND NO/100ths DOLLARS ($77.00) per week on the 524th Friday after entry hereof.*
>
> IT IS FURTHER ORDERED that *until July 7, 1996, or death of Defendant*, whichever first occurs, the Friend of the Court shall enforce this alimony provision as though under the Statute made and provided for enforcement of Child Support Orders or Judgments, and Plaintiff shall forthwith execute and deliver to the Friend of the Court a wage assignment in the above matter and in the form prescribed by the Friend of the Court in such cases.
>
> [Emphasis added.]

B. 1993 CONSENT JUDGMENT

On January 12, 1993, eleven years after the parties divorced and approximately three years before the expiration of the alimony provided for in the divorce judgment, the parties entered a consent order modifying the divorce judgment. The order contained the following relevant provisions:

SUPPORT OF MINOR CHILD(REN)

> IT IS ORDERED that the Judgment and any subsequent modifications regarding support are modified to provide that, effective February 5, 1993, the Payer shall pay to the Recipient, through the Friend of the Court, for the support and maintenance of the minor child(ren) as follows:
>
> Commencing Friday, February 5, 1993, the Payer, *Victor V. Valentine shall pay to the Friend of the Court the sum of Three Hundred ($300.00) per week and on each and every Friday thereafter for the support of the Recipient, Sharon L. Valentine, and for the support of Russell, the minor child of the parties, but the Payer's obligation for the support of the Recipient, shall terminate in the event of her death, but not upon her marriage, said sum to be adjusted downwards by Two Hundred Twenty-eight ($228.00) per week at such time as the minor child, Russell, is not longer eligible for support*.
>
> Each child shall remain eligible for support until he or she reaches the age of 18, or graduates from high school, whichever shall occur later, provided that support shall continue for each child after the child's 18th birthday so long as that child is regularly attending high school on a full time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full time basis with the Payee of Support or at an institution, but in no case after the child reaches 19 years and 6 months of age.
>
> If the Recipient does not have physical custody of the minor child(ren), the Friend of the Court is hereby directed to make all payments directly to the verifiable custodian of the minor child(ren) or to the minor child(ren) if the minor child(ren) do(es) not have a verifiable custodian.
>
> [Emphasis added.]

The consent order also contained a provision that provided: "IT IS FURTHER ORDERED that except as modified by this Order, Orders previously entered in this matter shall remain in full force and effect."

C. 2012 MOTION TO MODIFY SPOUSAL SUPPORT

Victor stopped paying Sharon spousal support in January 2012. Victor had been paying support "at the stepped down basis of $72/wk"[3] since the entry of the 1993 consent order.

On February 28, 2012, Victor filed a verified motion to modify spousal support. He asserted that under the terms of all prior judgments and orders entered in this matter his obligation to pay spousal support ended on July 7, 1996. He further asserted that he had overpaid Sharon in the amount of $54,000 because his spousal support obligation had not been terminated in 1996 as required. Victor requested the termination of his spousal support obligation because his support obligation should have ended in 1996 based on the terms of all the judgments and orders and because of the presence of the following changed circumstances:

> A. Plaintiff has retired and is now age 66 years old;
>
> B. Plaintiff's monthly income has significantly declined from $10,000.00 a month to approximately $1,537.00 a month in social security benefits;
>
> C. Plaintiff has three (3) minor children which he supports: **TYLER JET VALENTINE, Dob: 9/29/1997; CHARLES HUFF VALENTINE, Dob: 4/26/2000; JACKSON HENRY GOODRICH VALENTINE, Dob 8/9/2001**;[4] and,
>
> D. He can no longer afford to live on his current income, support his three (3) minor children and pay spousal support to Defendant.

Sharon responded that laches and principles of equity and fairness barred any termination of plaintiff's $72 per week support obligation.

A successor circuit judge heard arguments on Victor's motion on March 12, 2012. The trial court adjourned the matter for 30 days to allow the parties to research the following issues:

> One is that whether – Let's say if the '96 deadline was something that was significant, was that waived; or is there some equitable argument, as [defense counsel] is arguing. Was that waived or some other equitable argument when he agreed to the modification in '93, or is this still nonmodi- I mean, is this still modifiable, no matter what the property settlement agreement said? You know, it's still modifiable and I can do whatever is appropriate based on the evidence.

---

[3] This amount represents the $300 per week award of the 1993 consent order minus the $228 per week that was to be subtracted when Victor was no longer required, under the 1993 order, to pay support regarding the parties' youngest child.

[4] These children are the issue of one of Victor's subsequent marriages.

The court noted, however, that

> [m]y inclination was to say that the '96 deadline pretty much said it all, and that the fact that it went beyond that was just gratuitous and that – I was really glad he wasn't asking to get back the fifty-some thousand dollars that he paid, 'cause I don't think I would have said she had to pay it back, but – So it's – it's a really convoluted situation that may – that we need to address before I get to the fact that he's got limited income and she's got limited income and we looked at – we look at their resources.

Subsequently, Victor moved for a stay of his spousal support obligation because the Friend of the Court had show caused Victor for failing to pay support.

On June 22, 2012, the court issued a written decision in which it ruled that the original spousal support obligation was modifiable:

> After full review of the facts in this particular case, this Court is unable to conclude that the Judgment of Divorce in this matter entered over 30 years ago and the accompanying property settlement agreement provided for a non-modifiable award of alimony. This Court is also unable to agree with Plaintiff that the subsequent modification in 1993 was in error because it did not provide for the 1996 termination date that had existed. If there was such an error, the time is long past for the rectifying of that particular event.

The court stayed further support payments and directed the parties to appear at an evidentiary hearing on the question of whether the amount of spousal support set forth in the 1993 consent order should be modified and to bring with them to the hearing the following documentation:

> 1. Written documentation of all income including Social Security, Pensions, Wages, Dividends, inheritances, etc., for the year 2012.
>
> 2. Written proof of all expenses including rentals, mortgages, utilities, credit cards, and anything related to every day basic needs such as food, gas, medical, dental.
>
> 3. Copies of credit card statements for the year 2012 from January to date.
>
> 4. Copies of all Bank Accounts for the year 2012 from January to date.
>
> 5. Written documentation of any and all outstanding bills that are required to be paid on a monthly basis.

The court reconvened the evidentiary hearing on October 9, 2012. Both parties again offered testimony. Following the close of proofs, the court took the matter under advisement. On November 7, 2012, the court entered its opinion and order granting Victor's motion to

terminate spousal support payments. The court began by vacating its prior ruling that the 1982 spousal support obligation was modifiable:

> The Court finds that the Property Settlement Agreement (PSA) at the time of the Judgment of Divorce (JOD) which provided that the spousal support was to end on July 7, 1996, is still in effect. Nothing that has transpired since the Agreement was signed on August 18, 1982, and the Judgment was entered on October 18, 1982, has occurred that has legally modified this provision. Although this Court entered an opinion on June 22, 2012 finding that the PSA and JOD were modifiable, that opinion was incorrect and is set aside. The Court has taken much more time for review and consideration than it had available for the June opinion and now recognizes that it was in error.
>
> This Court also recognizes that Mr. Valentine has had to be responsible for extensive attorney fees and that Ms. Valentine has been the beneficiary of the excellent pro bono services of very experienced counsel. Considering the limited financial situation of Ms. Valentine at the moment, the Court will not order her to pay the fees that Mr. Valentine has incurred although there would be some merit in doing so. It appears that she has clearly taken advantage of his good will for a long time.
>
> The fact that both parties entered into a consent agreement in 1993, does not modify either the JOD or the SA. There was no authority on the part of the Friend of the Court, or the parties or even this Court to modify a provision of the Court which was non-modifiable at the time of the Agreement and JOD.
>
> It is true that the equitable concept of *laches* might prevent Plaintiff from being reimbursed by Defendant for the spousal support paid by him after July 7, 1996, and for which he had no obligation to pay, but this Court finds that said concept does not result in a valid modification of either the PDA or the JOD or prevent this Court from enforcing both because once the Judgment is entered, that ends the authority of this Court to modify anything that is not modifiable. And, this Court finds that the original order of spousal support was to be non-modifiable.
>
> This Court finds that the agreement or order of the parties in 1993 is not enforceable because at that point, there was no authority on that part of the Court to enter a new order of modifiable spousal support. The fact that the Plaintiff was willing to enter into that "agreement" at the time is simply an indication of his generosity to Defendant at a time when he had no obligation to do so. Since there was no consideration given to him for his generosity, the amounts paid to Ms. Valentine must be considered no more than "gifts." He has the right to now say that he does not wish to provide these gifts any further.

The court also concluded that, even if the divorce judgment and marital separation agreement could be modified, it would be inappropriate to continue the order of January 12, 1993 and Victor's spousal support obligation:

> The Court also finds after reviewing all of the excellent research filed on behalf of these parties and all of the testimony and a review of the Probate file No. 2008 0055 CZ, that even if the spousal support provision of the JOD and the PSA were somehow modifiable, that it would not be appropriate to continue the Order of January 12, 1993.
>
> The spousal support in this case has continued so far past any reasonable amount of time based on the length of the marriage and the various events of these parties' lives following the ending of their marriage. It is unfortunate that for whatever reason, Defendant did not prepare herself for her health issues or financial needs that she would encounter later in life. It is unfortunate that she continued to rely on an Order that had long passed the reasonable amount of time for relying on such things. It is unfortunate that she did not appear to have responsibly saved for her future considering the funds that were made available from a variety of areas including her employment, her spousal support and monies she received through her family.
>
> Mr. Valentine has gone way beyond the call of duty he owed to his former wife and he is now facing his senior years with some cushion for his financial needs but not such a great amount that this Court should order him to support this wife that has not been part of his life for 30 years. If Mr. Valentine were to continue to live until his 90's, he will need every penny which he has saved and accumulated. The parties were only married for 16 years and yet, Mr. Valentine has generously provided assistance to his former wife for 29 years. It is doubtful that there is any Judge in the State of Michigan that would find that to be a reasonable amount of time for someone to pay spousal support in a marriage of that length.

Sharon moved for reconsideration, which the court denied on December 12, 2012, stating:

> Defendant goes on to argue that the court erred by declaring that the Spousal Support provision of the Property Settlement Agreement and/or the Judgment of Divorce was non-modifiable. This Court disagrees for the reasons stated in the November 2012 opinion. Nothing that is argued in the Motion for Reconsideration has changed the Court's opinion.
>
> This Court also noted that should it be found that the spousal support was indeed to be modifiable, and even though it may appear the [sic] Mr. Valentine may have adequate funds in his retirement accounts, those funds must last him for the rest of his life. He is entitled to enjoy those funds even to spend them somewhat foolishly on expensive private education of his children should he so choose.
>
> This Court noted that Ms. Valentine perhaps did not prepare for the future and/or perhaps even engaged in some questionable behavior as evidenced in a review of the Kalamazoo County Probate file regarding the estate of her deceased

> mother. Be that as it may, it would be highly inequitable to hold Mr. Valentine to continue to be responsible for support [of] Ms. Valentine after 30 years of being divorced from her and following only having been married to her for approximately 16 years, if this court remembers correctly. Enough is enough.

II. ANALYSIS

A. MODIFIABILITY OF ALIMONY AWARD

Sharon first argues that the trial court erred by ruling that the 1982 alimony award was nonmodifiable.[5] We agree.

Paragraphs 5.1 and 5.2 of the original martial separation agreement provided for "family support" consisting of payments to be made to Sharon to be used for the support of her and the parties' then-minor children. Paragraph 5.1 obligated Victor to pay Sharon a sum of $40,333 over the course of 10 years and 1 month. This obligation was to terminate upon Sharon's death. Paragraph 5.2 obligated Victor to pay Sharon $400 a week, to be reduced by $82 per week as each child reached the age of 18 years. This obligation "terminate[d] upon the death of either party but shall not terminate due to remarriage of WIFE, but shall terminate in full on July 7, 1996." Paragraph 8.2 of the agreement provided that "[i]t is intended by both parties that the support payments provided herein are considered to be periodic payments for the support of the WIFE and minor children . . . ." This paragraph also made the "periodic payments" "taxable to the WIFE under IRC Sec 215 and deductible to the HUSBAND under IRC Sec. 71 . . . ." The October 18, 1982 divorce judgment provided that Victor's alimony obligation to Sharon terminated on July 7, 1996, as well as upon her death, but not upon her remarriage. The document identified as the first modification of judgment of divorce, also entered on October 18, 1982, expressly modified the alimony provision found in the divorce judgment, but left intact the alimony termination date of July 7, 1996, as well as the condition that alimony terminate upon Sharon's death, but not her remarriage.

In October of 1982, the date of the judgment of divorce, whether an alimony award was modifiable was controlled by such cases as *Welch v Welch*, 112 Mich App 524, 526; 316 NW2d 258 (1982),[6] wherein this Court opined that only periodic alimony is subject to modification;

---

[5] "Where a judgment of divorce is entered pursuant to an agreement of the parties, the agreement is a contract, which this Court will enforce absent a showing of factors such as fraud or duress." *Thornton v Thornton*, 277 Mich App 453, 456; 746 NW2d 627 (2007). "The proper interpretation of a contract is a matter of law that this Court reviews de novo." *Id*.

[6] The "bright-line approach" to determining whether an alimony award was modifiable, employed in *Welch*, was rejected by a special conflict panel of this Court in *Staple v Staple*, 241 Mich App 562; 616 NW2d 219 (2000). This approach required determining if the award was "alimony in gross" or "periodic alimony." *Id*. at 565-567. If the award was alimony in gross, it was nonmodifiable; if it was periodic alimony, it was modifiable. *Id*. *Staple* rejected this approach in favor of the "intent approach" which provides that a party may petition the court to modify any alimony award unless the parties "clearly express their intent to forgo their statutory

alimony in gross is nonmodifiable. "[P]eriodic alimony is designed to provide support and maintenance rather than to distribute property." *Friend v Friend*, 486 Mich 1035; 783 NW2d 112 (2010). Alimony that serves to distribute property constitutes alimony in gross. *Id*. When alimony payments are deductible to the payer and are to be included in the payee's income, "[t]his suggests that the award is periodic alimony because alimony in gross is not a taxable event to the payee. However, periodic alimony is taxable to the payee." *Id*. The inclusion of contingencies such as death or remarriage also suggests an award of periodic alimony. *Id.* As observed in *Staple v Staple*, 241 Mich App 562, 578 n 14; 616 NW2d 219 (2000), the term alimony is gross is misleading in that the term does not refer to a true alimony arrangement, but to "a property division by fixed, nonmodifiable installment payments for which there is no statutory right to modification under MCL 552.28."

In the present case, the marital separation agreement and the first modification of the divorce judgment both expressly indicated that the alimony was being paid for the support of Sharon. This circumstance supports the conclusion that the alimony award was periodic alimony. Likewise, the conclusion that the alimony was periodic alimony is demonstrated by the fact that the martial separation agreement expressly provided that the parties intended the support payments to be "periodic payments for support," by the fact that the alimony payments were deductible by Victor and taxable as part of Sharon's income, and by the fact that alimony terminated on Sharon's death. The fact that the parties agreed to modify the support obligation in 1993 is also evidence of the parties' intent that the alimony was modifiable. For all of these reasons, the alimony was periodic alimony which was subject to modification under MCL 552.28. Accordingly, the trial court erred by concluding that the 1982 alimony award was not subject to modification.

B. MODIFICATION OF ALIMONY AWARD

Sharon next argues that the trial court erred by modifying the alimony award and terminating Victor's spousal support obligation.

As discussed above, the original 1982 alimony obligation was modifiable. Thus, the parties could enter into an agreement and the second trial court could enter the 1993 consent order effectuating the agreement, which removed the July 7, 1996 termination date originally set for the alimony obligation, instead providing that support was to terminate on Sharon's death. The trial court erred when it reached contrary conclusion. However, the trial court ruled that,

---

right to petition for modification of an agreed-upon alimony provision[.]" *Id*. at 569-570. However, in this case, given that both the 1982 judgment of divorce and 1993 consent order were entered prior to the decision in *Staple*, we will address the question of the modifiability of the 1982 alimony award based on the law applicable at the time. Moreover, even if we were to apply the *Staple* approach, our ruling would not be altered given that there is no evidence that the parties clearly expressed their intention to waive their right petition for modification of the alimony award.

even if the original alimony award was modifiable, it was inappropriate to continue Victor's obligation. Accordingly, we will address whether the trial court erred by modifying the award.[7]

Modification of spousal support is only warranted "on a showing of changed circumstances." *Laffin v Laffin*, 280 Mich App 513, 519; 760 NW2d 738 (2008). Here, although Victor pleaded a change in circumstances, the trial court did not make a finding regarding whether a change of circumstances had occurred. Accordingly, we remand for such a determination after a full evidentiary hearing.

On remand, Victor, as the party seeking modification, "bears the burden of proving the justification for the modified award." *Gates v Gates*, 256 Mich App 420, 435; 664 NW2d 231 (2003).

> Factors to be considered by the trial court in determining whether an award of spousal support is just and reasonable include: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the health of the parties, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. [*Id*. at 435-436 (formatting and citation omitted).]

"The main purpose of awarding spousal support is to balance the incomes and needs of the parties, without impoverishing either party." *Laffin*, 280 Mich App at 519. "Any modification of spousal support must be based on new facts or changed circumstances arising after the judgment of divorce, and requires an evaluation of the circumstances as they exist at the time modification is sought." *Id*. "By definition, changed circumstances cannot involve facts and circumstances that existed at the time the court originally entered a judgment." *Id*.

C. EVIDENTIARY ISSUE

Because we remand for determination of whether Victor established the requisite change in circumstances necessary to justify modification of spousal support, we find it prudent to address Sharon's claim of evidentiary error below.[8]

---

[7] "The trial court's factual findings relating to its decision to modify spousal support are reviewed for clear error. If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. This Court must affirm the trial court's decision regarding spousal support unless we are firmly convinced that it was inequitable." *Thornton*, 277 Mich App at 458-459 (quotation marks and citations omitted).

Sharon argues that the trial court erred by taking "judicial notice" of the contents of an probate court file concerning Sharon's inheritance from the estate of her deceased mother, who died in 2006. We agree.

MRE 201, the evidentiary rule regarding judicial notice, provides in relevant part:

> (b) A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> (c) A court may take judicial notice, whether requested or not, and may require a party to supply necessary information.
>
> (d) A party is entitled to upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

Without determining whether a trial court may ever take judicial notice of a probate court file in an unrelated case, we find that the trial court abused its discretion to the extent that it took judicial notice of the probate court file concerning Sharon's mother's estate. First, the court impermissibly limited Sharon's questioning into both the relevance of the probate court file, MRE 403, as well as her opportunity to be heard regarding the court's taking of judicial notice, MRE 201(d). The court also appeared to rely on Sharon's "questionable" conduct as evidenced in the probate court file, but portions, if not all, of that file were not admitted into evidence, and Sharon's counsel objected on relevance and other grounds. Thus, on remand, if Victor or the court seeks to introduce any contents of the probate court file, the trial court shall entertain and rule upon any objections Sharon may raise, as well as ensure that any documents in the file upon which the court subsequently relies are properly entered into evidence.

[8] "A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion." *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 303; 660 NW2d 351 (2003) (quotation marks and citation omitted).

Reversed and remanded for proceedings consistent with this opinion.[9] We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Cynthia Diane Stephens

[9] We reject Sharon's request that remand proceedings be held before a different trial judge. Sharon has not shown how the trial court was biased against her other than on the basis of its rulings. Adverse rulings, even if erroneous, are insufficient grounds for remand before a different judge; indeed, "[r]epeated rulings against a party, no matter how erroneous, or vigorously or consistently expressed, are not disqualifying." *Bayati v Bayati*, 264 Mich App 595, 603; 691 NW2d 812 (2004).