

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 12th day of March, 2020.

Present: Goodwyn, Mims, Powell, Kelsey, McCullough, and Chafin, JJ., and Russell, S.J.

Brian I. Davis, Appellant,

against Record No. 180040
Court of Appeals No. 0703-17-4

Meryl R. Davis, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no error in the judgment of the Court of Appeals.

Brian I. Davis (“husband”) and Meryl R. Davis (“wife”) were divorced in 2009. The trial court divided the marital property nearly equally in equitable distribution, awarding both parties approximately \$850,000 in assets. It then entered a spousal support order awarding wife \$5,100 per month for an undefined duration. Several years later, husband filed a motion to modify spousal support alleging that he could no longer work and had new expenses due to a disability. At the time of the modification hearing, husband owned savings, retirement, and brokerage accounts and home equity worth a total of approximately \$1.4 million. Wife, however, reported that her assets had diminished since equitable distribution, with her present assets totaling approximately \$681,000. Both parties’ sole source of income was social security disability benefits.

After considering the evidence, the trial court granted husband’s motion. Relying on the standards articulated in *Driscoll v. Hunter*, 59 Va. App. 22 (2011), it found that husband had demonstrated a material change in circumstances that warranted modification because his disability reduced, but did not eliminate, his ability to pay and wife’s circumstances merited continued spousal support. Consequently, it reduced husband’s monthly support obligation to \$3,500. The Court of Appeals affirmed the trial court’s decision by unpublished opinion, holding that the trial court properly applied *Driscoll* and did not abuse its discretion in modifying

the support obligation given its careful weighing of the complex considerations and circumstances presented.

We agree with the Court of Appeals' opinion and affirm.*

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of Fairfax County.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "DBRM", written in a cursive style.

Clerk

* We note that although *Driscoll* controls this case, the General Assembly amended Code § 20-109—the statute governing modification of spousal support orders—during the pendency of this appeal to include new subsections E, F, and G. These amendments will govern similar cases in the future.