IN THE COURT OF APPEALS OF IOWA

FILED
MAR 0 9 1988
CLERK SUPREME COURT

IN RE THE MARRIAGE OF CALVIN W. HESSE AND LaVONNE A. HESSE

Upon the Petition of CALVIN W. HESSE,	)	
Petitioner-Appellant/ Cross-Appellee,	)	188
And Concerning LaVONNE A. HESSE,	)	Filed March 9, 1988
	)	7-566 87-594
Respondent-Appellee/ Cross-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 31976) William G. Klotzbach, Judge.

Petitioner and respondent appeal and cross-appeal from an order modifying an alimony obligation. **AFFIRMED AS MODIFIED.**

Mark W. Fransdal of Redfern, McKinley, Mason & Dieter, Cedar Falls, for petitioner-appellant/cross-appellee.

George L. Weilein of Gallagher, Langlas & Gallagher, P.C., Waterloo, for respondent-appellee/cross-appellant.

Considered by Hayden, P.J., and Sackett, and Habhab, JJ.

SACKETT, J.

In this case we address the issue of a husband's continuing obligation for alimony where he has experienced a substantial decrease in net worth due to the adverse condition of the Iowa farm economy.

Calvin W. Hesse appeals and LaVonne A. Hesse cross-appeals from an order decreasing a $500 per month alimony award to LaVonne made in a 1983 dissolution decree. The alimony was decreased to $250 per month. We determine on our de novo review, Iowa R. App. P. 4, that LaVonne now has a superior financial position and income sufficient to meet her needs. We determine the alimony should terminate.

Calvin and LaVonne were married in 1953. Their marriage was dissolved in 1983. During the marriage Calvin had been involved in insurance sales and farming; LaVonne had assumed the role of homemaker and helpmate. The dissolution decree awarded Calvin property with a net value of $337,350. Some $272,000 of that amount represented farmland inherited by Calvin. LaVonne received property with a net value of $252,930. Of her amount, $95,000 represented farmland she had inherited. Calvin also was ordered to pay LaVonne alimony of $500 per month.

On November 15, 1985, Calvin filed a petition seeking modification of the alimony award. The trial court reduced the alimony to $250 as of March 2, 1987. Calvin appeals and LaVonne cross-appeals from this order. Each party challenges the amount of the reduction. Calvin contends he should have no further obligation for alimony. LaVonne contends the trial court should not have modified the award. LaVonne contends the trial court did not properly consider evidence of the parties' financial condition at the time the decree was entered.

The original decree is conclusive as to the circumstances existing as of that date, including those which would have been known through due diligence. Huffman v. Huffman, 176 N.W.2d 859, 861 (Iowa 1970). Circumstances to justify a modification are those which exist at the time of the petition for modification, not at the time of the original decree. See In re Marriage of Shima, 360 N.W.2d 827, 829 (Iowa 1985). We apply these principles in our review. To modify a dissolution decree there must be a substantial change in circumstances since the entry of the original decree. See Iowa Code §598.21(8). In re Marriage of Habben, 260 N.W.2d 401, 403 (Iowa 1977); Warren v. Warren, 191 N.W.2d 659, 660 (Iowa 1971); McDonald v. McDonald, 183 N.W.2d 186, 188 (Iowa 1971). The change must be material, substantial and permanent. Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973).

A large portion of the assets awarded to Calvin in the dissolution decree were equities in Iowa farmland. At the time of trial on the modification Calvin's net holdings had decreased to less than $100,000. The decrease was the result of the sudden and substantial decline in Iowa farm real estate values. Calvin is not in this position because of lack of ambition or diligence. His is a problem of many Iowans who had invested in farm real estate. See In re Marriage of Hoag, 380 N.W.2d 8, 10 (Iowa App. 1985). The decline was beyond Calvin's control. The fact there would be such a sudden and substantial decline in farm real estate values was not a factor which would have been within the contemplation of the trial court when the original decree was entered. See Jensen v. Jensen, 253 Iowa 1013, 1015, 114 N.W.2d 920, 921 (1962). The original decree is entered with a view to reasonable and ordinary changes that may be likely to occur in relation to the parties. Mears v. Mears, 213 N.W.2d at 515. The Iowa farm crisis was not a reasonable and ordinary change. Calvin's income

from insurance sales was about $12,000 at the time of the dissolution. It was about $7,000 at the time of the modification hearing.

LaVonne had a net worth at the time of trial on the modification issues of close to $200,000. Because a substantial portion of the property set aside to her in the decree was cash, she did not suffer the large decrease in net worth that Calvin did. She did, however, also have real estate and she too saw its value decrease. Her adjusted gross income, excluding alimony, was about $15,000 annually. Her income is generated from assets awarded to her in the decree. She had had no income in her own right at the time of the dissolution decree.

We determine Calvin has met the burden necessary for modification. LaVonne's net worth is now over twice that of Calvin's. She has a greater income than he does. The income she receives is sufficient to take care of her needs.

We modify the award to provide Calvin's alimony obligation shall cease on March 2, 1987, the date of the trial court's order modifying the decree. Calvin argues the decree should be modified retroactively. We disagree. The decree of modification can only modify payment not yet matured. Payments maturing prior to the decree of modification cannot be nullified. See In re Marriage of Harvey, 393 N.W.2d 312, 314 (Iowa 1986); Siver v. Shebetka, 245 Iowa 965, 968-69, 65 N.W.2d 173, 175 (1954).

Each party shall pay his or her own attorney fees and one-half the court costs.

AFFIRMED AS MODIFIED.