IN THE COURT OF APPEALS OF IOWA

No. 3-411 / 92-1212

FILED
JUN 28 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF JOSEFINA M. KERR AND CHARLES A. KERR

Upon the Petition of
JOSEFINA M. KERR,

Appellee,

And Concerning
CHARLES A. KERR,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

Charles Kerr appeals from a judgement of the district court denying his application for modification of child support. **AFFIRMED.**

David L. Reinschimidt of Munger & Reinschmidt, Sioux City, for appellant.

Josefina Kerr, pro se, for appellee.

Bonnie J. Campbell, Attorney General, John Parmeter, Special Assistant Attorney General, and Robert R. Huibregtse, Assistant Attorney General, for the Child Support Recovery Unit.

Considered by Donielson, C.J., Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J.

Petitioner, Josefina M. Kerr, and respondent, Charles A. Kerr, were married December 17, 1983. They are the parents of two children, ages fourteen and nine. The marriage was dissolved May 17, 1988. Joint legal custody was granted, with Josefina having physical care of the children. Charles was ordered to pay $250 per month child support for each child. In addition, he was to provide medical and health insurance for the children. Josefina is now age forty-six and Charles age sixty-four.

The dissolution decree traced Charles's farming history. It included the fact that he once controlled 4900 acres, worth millions and that now he controls 360 acres through Chance Land Corporation. Charles is president and has all the voting stock in the corporation. In the decree, the trial court pointed out the confused and tangled financial affairs of the respondent.

This appeal is from the trial court's order denying Charles's application for modification of child support, dated June 3, 1992.

Iowa Code section 598.21(8) gives the lower court the jurisdiction to modify child support where there is a substantial change of circumstances. The criteria to be considered are set out in section 598.21(8)(a)-(k). The material change of circumstances must be financial or otherwise, making it equitable that other or different terms be imposed. In re Marriage of Jensen, 251 N.W.2d

252, 254 (Iowa 1977). The change must have occurred after the date of the original decree and it must not have been in the contemplation of the court which issued the decree. Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). The burden is on Charles to prove a substantial change in circumstances by a preponderance of the evidence. See In re Marriage of Feustel, 467 N.W.2d 261, 265, (Iowa 1991); Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973).

Our standard of review in a dissolution proceeding is de novo. Iowa R. App. P. 4; In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992).

The record in the trial court shows that Charles received $500 per month rent from Chance Land Corporation, Social Security benefits of $192, and $250 per month as a drainage trustee, for a total of $942 per month. He also received credit on child support of $62 per month paid directly to Josefina by Social Security.

In addition, he received $30,750 in 1992 from Chance Land Corporation. This amount Charles handled without any control from anyone else. Charles testified to payments made from this amount. They included mortgage payments of $8,000, property taxes of $6,547.24 and miscellaneous payments of $1,250. None of these payments were supported by documentation. A figure of $2,500 was also used by Charles for federal and State incomes taxes. However, the record shows no returns were filed for the years in question.

The trial court stated:

> The Court is unconvinced that some of the money, in addition to the $6000.00 paid to Charles, is unavailable for inclusion in his income and the payment of child support. From the standpoint of his financial situation it is difficult to determine what income or monies he has available to pay support.

In appellant's brief, it is pointed out that now Charles is relatively debt free.

Charles had the burden to show by a preponderance of the evidence that a material change of circumstances had taken place which was not in the contemplation of the court in the original decree. He had the right to do this by evidence, including documents. The trial court held he failed to carry his burden. Upon our de novo review, we agree.

The dismissal of Charles's application for modification of child support is affirmed. Costs of this appeal are assessed to Charles Kerr.

AFFIRMED.