

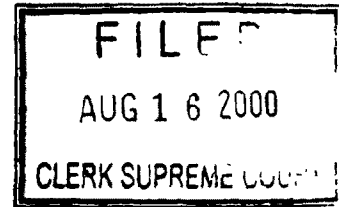
IN THE COURT OF APPEALS OF IOWA

No. 0-357 / 99-1747
Filed August 16, 2000

**IN RE THE MARRIAGE OF LINDA J. MUSCH
AND JIMMY D. MUSCH**

Upon the Petition of
LINDA J. MUSCH,
Petitioner-Appellee/Cross Appellant,

And Concerning
JIMMY D. MUSCH,
Respondent-Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Black Hawk County, James L.
Beeghly.

The respondent appeals and the petitioner cross-appeals from the
reduction of alimony to the petitioner from \$400 to \$250 per month. **AFFIRMED.**

Gary J. Boveia of Boveia Law Firm, Waverly, for appellant/cross-appellee.

Michael W. Buckner and Obie Saddler, Jr. of Ball, Kirk & Holm, P.C.,
Waterloo, for appellee/cross-appellant.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

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ZIMMER, J.

Respondent Jimmy Musch appeals, and Linda Musch cross-appeals, from the district court's reduction of alimony in respondent's modification action from \$400 to \$250 per month. We affirm.

Linda and Jimmy married in 1960. After a thirty-six-year marriage, the couple separated in 1996 and divorced in early 1998. At the time of the dissolution trial, Linda worked in the medical records department of a clinic and Jimmy worked at a construction firm as a laborer. In 1997, Jimmy's gross income was \$45,617 and Linda's was \$15,219. The original decree, entered on February 16, 1998, awarded Linda alimony of \$400 per month, in light of the fact that she earned substantially less than Jimmy, had no special education with which to increase her income, and had spent much of the marriage as a housewife. The very next day, Linda's mother died unexpectedly, leaving Linda approximately \$110,000. Linda invested the money in a mutual fund. As of June 1999, the investment had increased in value to around \$147,889.

Based on Linda's inheritance, Jimmy filed a petition for modification to reduce or eliminate the alimony award. Trial took place on September 30, 1999. The trial court entered its ruling the same day. The trial court found a substantial change in circumstances and reduced the alimony to \$250 per month. Jimmy now appeals. He contends the trial court should have eliminated the alimony altogether. Linda cross-appeals, contending the alimony should not have been reduced. She also seeks appellate attorney fees.

1. Scope of Review. We review de novo proceedings to modify the alimony provision of a dissolution decree. *In re Marriage of Sjulín*, 431 N.W.2d

773, 776 (Iowa 1988); *Wemli v. Wemli*, 216 N.W.2d 322, 323 (Iowa 1974). We give weight to the findings of the trial court but are not bound by them. *Sjulin*, 431 N.W.2d at 776. Our duty is to examine the entire record and adjudicate rights anew on those questions properly presented. *Id.* The burden is on the party seeking modification of a dissolution decree to prove a substantial change in circumstances from the time the decree was entered. *Id.* Even if a substantial change is shown, we will not modify the decree unless its enforcement will be attended by a positive wrong or injustice as a result of changed conditions. *Id.*

II. Modification of Alimony Award. The trial court found Linda's inheritance presented a substantial change in circumstances warranting a reduction of alimony. After conducting a de novo review of the record, we agree. The inheritance in this case was sizeable and has yielded significant income within a short time. In 1998 alone, the account earned interest of \$7,480.25. Receipt of an inheritance is a proper factor in determining whether there has been a 'substantial change in circumstances.' See Iowa Code § 598.21(8)(b); *In re Marriage of Halbach*, 506 N.W.2d 808, 810 (Iowa App. 1993) (stating inherited property may be considered in assessing continued need for alimony).

We also agree with the trial court's conclusion that the alimony award should not be eliminated entirely. The purpose of the alimony award in the original decree was to recognize Linda's long-term role as homemaker during the marriage and remedy her resultant limited earning capacity and the disparity in the couple's incomes. Furthermore, for the first thirty years of the marriage, Linda did not work outside the home and was, therefore, unable to accumulate retirement savings of her own. She began working part time in 1992 and full time

in 1996. She was fifty-eight years old at the time of the modification. As a result of her short working life, Linda has little contributed to her employer-sponsored retirement plan and due to her age, will not be able to contribute a great deal more before retirement. Linda has not spent the inheritance to improve her general standard of living, but instead invested it for retirement purposes. The purpose of the original alimony award has not been entirely dissipated by the inheritance. Therefore, we decline to disturb the trial court's reduction of the alimony to \$250 per month.

III. Appellate Attorney Fees. Linda requests appellate attorney fees. The award of attorney fees is not a matter of right but rests within the court's discretion. *In re Marriage of Will*, 602 N.W.2d 202, 206 (Iowa App. 1999). We will weigh the requesting party's financial needs and the other party's ability to pay. *Id.* Linda's inheritance makes her well-equipped to pay her own attorney fees. *See In re Marriage of Goodwin*, 606 N.W.2d 315, 324 (Iowa 2000) (noting receipt of inheritance equipped party seeking appellate attorney fees to pay them). We award no attorney fees on appeal.

Costs are taxed one half to each party.

AFFIRMED.