IN THE COURT OF APPEALS OF IOWA

FILED
FEB 2 3 1989
CLERK SUPREME COURT

IN RE THE MARRIAGE OF EARL WILLIAM PFAB
AND LINDA CATHERINE PFAB

Upon the Petition of)
EARL WILLIAM PFAB,)
Petitioner-Appellant,)
And Concerning)
LINDA CATHERINE PFAB,)
Respondent-Appellee.)

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Appeal from the Iowa District Court for Dubuque County (No. DM 5003), Thomas H. Nelson, Judge.

The husband appealS the dismissal of his petition for modification. **AFFIRMED.**

Mary Browne McCuskey of Clemens, King & McCuskey, Dubuque, for petitioner-appellant.

Mary Schumacher of Roth & Schumacher, Dubuque, for respondent-appellee.

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

SCHLEGEL, P.J. 396

Petitioner, Earl William Pfab, appeals the trial court's dismissal of his petition for modification of the child support provisions of the decree of dissolution, as amended. We affirm.

The marriage of petitioner, Earl Pfab, and respondent, Linda Pfab, was dissolved by decree entered in 1985. The court ordered joint custody of the parties' two children, with physical custody being awarded to Linda. At the time of the entry of the decree, Earl had been laid off from his job at John Deere for an extended time and had just recently found part-time employment at about $3,000 per year. Due to his employment status at the time of the decree, Earl was not ordered to pay child support. Linda was employed full time, and the decree awarded her the family home, with a substantial equity, and a debt of approximately $7,000, pursuant to a stipulation agreeing that in exchange for the entire equity in the house, Earl would not have to pay child support.

In March 1987, Linda applied for modification of the decree, asking that Earl be required to pay child support. At the time of the application and the hearing, Earl had been recalled to John Deere and was earning approximately $28,000 per year. The court placed a value upon the equity Earl had agreed be transferred to Linda in lieu of child support, divided it by the number of months remaining until

the two children reached age eighteen, and found it equaled $98.75 per month per child. The court recognized that in view of Earl's increased income, he should be able to pay child support, and ordered him to pay support at the rate of $30 per week per child. The decree of modification was dated October 7, 1987. On October 16, 1987, Earl was again laid off from John Deere. In November 1987, he sought modification of the dissolution decree, asking that the child support obligation imposed in October be eliminated due to his new lay-off. He claimed the lay-off as a change of circumstances.

Upon hearing on his petition for modification, it was shown that Earl had made no payment of child support under the order of October 7, 1987, and the court dismissed his petition. Earl appeals that dismissal.

Our review of this modification matter is de novo. In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983); Iowa R. App. P. 4. Courts have the authority to modify dissolution decrees when there has been a substantial change in circumstances. Iowa Code § 598.21(8) (1987). See id.

The trial court has reasonable discretion in passing upon the advisability or necessity for modification of a dissolution decree provision. On appeal, we will not disturb the trial court's conclusion unless there has been a failure to do equity. In re Marriage of Wahlert, 400

N.W.2d 557, 560 (Iowa 1987). We reach our conclusion as to whether equity has been done based upon our de novo review. Iowa R. App. P. 4.

Earl complains that the trial court dismissed his petition solely upon the "clean hands" doctrine and claims that doctrine has no applicability to modification actions. He is correct in his assertion that the court used that doctrine as the sole basis for the dismissal of his petition. In that respect, the court stated:

> 2. This action is in equity and a basic principle of equity is, "He who comes into equity must come with clean hands." The Court finds that when the Petitioner's income was modified, or reduced, he is expected to do the best he can under the circumstances. There was a decree of this Court ordering him to pay to the Respondent $60.00 per week. He makes no showing to the Court that he never had $60.00 or any portion thereof with which to contribute to the support of his children. The Court expects that parties seeking modification of a Decree must show that they have used their best efforts to comply with that decree. Petitioner has made no such showing.

We are not, however, prepared to agree with Earl that the so-called "clean hands" doctrine has no applicability to this case. While we find that Earl's petition for modification should be denied on other grounds, we do not find that the court's refusal to consider modification of the decree was a denial of equity simply because it relied upon that doctrine.

The "clean hands" doctrine, so-called because it has its origin in the maxim: "He who would come into equity must come with clean hands," has been said to be based on

grounds of public policy and protection of the integrity of the court. Sisson v. Janssen, 244 Iowa 123, 130-31, 56 N.W.2d 30, 34 (1952). "It means that equity refuses to lend its aid in any manner to one seeking its active interposition, who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief." Id. (citing 30 C.J.S. Equity § 93 (1965)).

In this case, Earl seeks equity in the very matter where he has failed to pay any support, although ordered to do so. It is not improper for the trial court to have found that in view of that fact and also in view of the fact that he made no showing that he never had $60 or any part of it to contribute to the support of his children, that his hands were not clean.

We choose, however, to bottom our decision upon another factor. In our de novo review, we find that the record fails to demonstrate a substantial change in circumstances such as to justify modification.

"As a general rule, a modification should be granted if there has been a substantial lowering of earning power for a sustained period of time." Marriage of Wahlert, 400 N.W.2d at 560. We have previously held that in setting an initial award of child support it is appropriate to consider the earning capacity of the parents. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984) (emphasis added). After a thorough review of Iowa cases in

which modification was sought after a reduction in income, our supreme court commented, in the case of Marriage of Vetternack, 334 N.W.2d at 763:

> [c]urrent inability to pay has become less a consideration and long range capacity to earn money has become more of a consideration; and . . . any voluntariness in diminished earning capacity has become increasingly an impediment to modification.

From the record in this case, it is apparent that following his lay-off from Deere in 1987, and after a short period of reduced income or the lack thereof, Earl commenced receiving benefits and income that was not appreciably less than that he claims he received while working at Deere. Including all income and benefits he received, we cannot say that there was a substantial decrease in his income. In addition, the record shows that he has an earning capacity far above the income he receives for part-time work at FDL, where he claims he now works from twenty-five to thirty hours per week at $7.70 per hour. He voluntarily refuses to look for work at any place other than Dubuque. He has carpentering skills that can earn substantial sums for him, were he to attempt to find that kind of work. A person with an obligation to support another is not relieved of that obligation by voluntarily reducing his or her assets. In re Marriage of Cerven, 335 N.W.2d 761, 763 (Iowa 1983).

Earl argues that he fulfilled his support obligations by giving up his interest in the equity of the family

home. While it is beneficial that Linda and the children have a home in which to live--so long as Linda can pay the payments, taxes, upkeep, and other expenses that go with such ownership--the equity in the home cannot provide for the cash needs of the children unless Linda sells or encumbers the property. The court, in 1987, found that there were needs for support above and beyond the value of the prepaid support the court acknowledged. An agreement between the parties to settle child support for a prepaid amount cannot substitute for the obligation of both parents to support their children.

We find from the record that Earl has failed to show that there has been a substantial change in circumstances since the modification of October 1987, and we affirm the trial court's dismissal of the petition for modification filed herein in November 1987.

AFFIRMED.