IN THE COURT OF APPEALS OF IOWA

No. 3-154 / 92-1479

FILED
OCT 28 1993
CLERK SUPREME COURT

IN RE THE MARRIAGE OF GEORGE STEINKE AND LINDA M. STEINKE

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Upon the Petition of
GEORGE STEINKE,

Appellant,

And Concerning
LINDA M. STEINKE,

Appellee.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

The husband appeals the district court's modification of his alimony obligation. **AFFIRMED AS MODIFIED.**

John C. Monroe, Cedar Rapids, for appellant.

Kimberly A. Ten Eick and Gary L. Robinson, of Klinger, Robinson, McCuskey & Ford, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ. Donielson, J., takes no part.

SCHLEGEL, J. 000498

George and Linda Steinke were married in 1972. They had two children during the marriage: Tracy, born on March 26, 1973; and Keri, born on March 26, 1977.

George and Linda were divorced on July 6, 1990. They had entered into a stipulation which was incorporated in the dissolution decree. The parties were granted joint custody of the children, with Linda having primary physical care. George agreed to pay child support of $1,185 per month for the support of the two children. He also agreed to pay alimony of $400 per month for a period of ninety-six months.

The dissolution decree was modified on December 18, 1990. Linda had a nervous breakdown in October 1990 and was hospitalized. Each child testified she preferred to live with George. The district court granted George physical care of the children. George's child support obligation was terminated. Because of her health problems, Linda's alimony award was increased to $1,200 per month to continue for ninety-three months.

The dissolution decree was modified again on December 31, 1991. In early 1991 Linda was diagnosed with breast cancer. She underwent surgery and radiation treatments. George had failed to notify Linda her health insurance through his company had terminated at the time of the dissolution, and she did not have insurance coverage. Due to Linda's medical bills, George's alimony obligation

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was increased to $1,385 per month, to continue for seventy-eight months.

At the time of the second modification proceeding, George was employed by S.O.S. Enterprises, in which he was a part-owner. His annual income was about $78,000, and he had net monthly income of $4,052. Linda had no income due to her medical problems.

George was discharged from S.O.S. on March 4, 1992. He subsequently found employment as a salesperson for Horizon Accountants. His annual income is currently about $22,620, and he has net monthly income of $1,551. George remarried on May 23, 1992. His new wife, Cheryl, has annual income of about $26,000. George, Cheryl, Tracy, and Keri all live in a low-income apartment. Tracy is now over eighteen, attending Kirkwood Community College, and working part-time.

Linda is currently employed as a part-time sales clerk at "Everything's A Dollar." Her annual income is $4,322, and her net monthly income is about $252. Linda also lives in a low-income apartment.

George filed an application to modify the dissolution decree on May 7, 1992, seeking a reduction of his alimony obligation. He also asked that Linda be required to pay child support.

The district court entered an order modifying the dissolution decree on September 10, 1992. The court found there had been a substantial change in circumstances since

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the last modification order due to the fact George had been discharged from his job at S.O.S. and now had substantially less income. The court reduced George's alimony obligation to $1,000 per month. The court did not order Linda to pay child support. George appealed.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Pursuant to Iowa Code section 598.21(8), a court of competent jurisdiction may subsequently modify a decree of dissolution where there has been a substantial change in circumstances. In re Marriage of Feustel, 467 N.W.2d 261, 263 (Iowa 1991). To justify a modification, some material change must be shown in the circumstances of the parties, financially or otherwise, making it equitable that other or different terms be imposed. Id. The circumstances which have changed must be those which were not then within the contemplation of the court when the decree or any subsequent modifications were entered. Id.

II. George contends that his alimony obligation should have been reduced even further. He believes it is not equitable for the court to require him to pay $1,000 of his $1,551 net monthly income. George states that he cannot support himself and his children on $551 per month.

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Alimony is not an absolute right; the award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We agree with George that it is inequitable to require him to pay over half of his income in alimony. The effect of the district court's decision is to require George and his family to live on the income of Cheryl, his new wife. While Cheryl's income may be considered as it relates to George's overall financial situation, Cheryl has no obligation to support George's children. We determine George's alimony obligation should be reduced to $750 per month until his alimony obligation terminates, which should be July 1, 1998.

III. George also asks that Linda be required to pay child support. He points out the district court made no findings that deviation from the child support guidelines was warranted. George claims the fact that his income was substantially reduced and Linda is now working is a sufficient change in circumstances to warrant requiring Linda to pay monthly child support.

There is a rebuttable presumption that the amount of child support which would result from the application of

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the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). The court cannot vary the amount of the child support without a written finding that the guidelines would be unjust or inappropriate. In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

We note that Tracy is over the age of eighteen and is a student. Tracy is also working part-time, and her income is actually greater than that of her mother. Therefore, because Tracy is largely self-supporting, we will not require Linda to contribute to her support.

However, we determine there has been a substantial change in circumstances and that Linda should be required to contribute to the support of Keri. We may consider Linda's receipt of alimony in an attempt to do justice between the parties. See In re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991). We therefore consider Linda's net monthly income to be $1,002 and George's net monthly income to be $801 for purposes of applying the child support guidelines. Under the chart for one child Linda should pay $232 per month for the support of Keri.

IV. In summary, we have modified George's alimony obligation to require him to pay $750 per month for the remaining period alimony is due under the terms of the dissolution decree. We have also modified the dissolution decree to require Linda to pay child support of $232 per

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month for the parties' youngest child, Keri, until she graduates from high school or becomes eighteen years of age, whichever occurs first. With these modifications we affirm the district court.

AFFIRMED AS MODIFIED.