FILED
DEC 29 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN RE THE MARRIAGE OF LINDA J. VESELY AND TEDDY J. VESELY

UPON THE PETITION OF LINDA J. VESELY,	)	
Petitioner-Appellant,	)	
AND CONCERNING	)	Filed December 29, 1982
TEDDY J. VESELY,	)	2-313 2-67812
Respondent-Appellee.	)	

Appeal from Johnson District Court, Robert E. Ford, Judge.

Petitioner-wife appeals from trial court's denial of her application for a modification of the parties' dissolution decree, in which she requested that the child support award be increased and that related provisions of the decree be altered. AFFIRMED AS MODIFIED.

John O. Moeller, Davenport, for petitioner-appellant.

C. Peter Hayek of Hayek, Hayek, Hayek & Holland, Iowa City, for respondent-appellee.

Heard en banc.

Petitioner-wife appeals from trial court's denial of her application for a modification of the parties' dissolution decree, in which she requested that the child support award be increased and that related provisions of the decree be altered. We affirm as modified.

Petitioner Linda J. Vesely filed her petition for dissolution of the parties' ten-year marriage in October 1977. The trial court granted the petition and adopted the parties' stipulation in full. In accordance with this stipulation the trial court awarded Linda custody of the nine-year-old child, Kristina. Respondent, Terry J. Vesely, was directed to pay $100 per month in child support and to buy a $25 savings bond each month in the child's name as a college education fund. Since the dissolution, Terry has voluntarily contributed a $50 bond each month rather than a $25 bond.

Claiming that material changes in circumstances had occurred subsequent to the entry of the original dissolution decree, Linda filed an application for modification of that decree. Linda contended that three alleged changes, in particular—inflation, the child's increasing financial needs as she matures, and Teddy's remarriage to a woman earning a substantial salary—supported modification. She requested that the child support award be increased to $250 per month, that the requirement of bond purchases be dropped, and that she be allowed to claim the child every year for purposes of income tax deduction.

After a hearing on the merits, the trial court denied the application for modification, stating that petitioner had failed to establish substantial circumstances which were not within the contemplation of the trial court when it entered the original decree, as required by Iowa caselaw. In conjunction with this ruling, the court noted that "the added expenses which apparently motivated the petitioner to bring this application. . . [inflation and the child's increasing financial needs] were within the contemplation of both the petitioner and the trial court on the date the original decree was entered."

In her appeal from this ruling, Linda challenges the requirement that changed circumstances relied upon to obtain modification must have been outside the contemplation of the original court, but asserts that, in any event, the changes she cited met that requirement. Our review of these issues is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Iowa Code § 591.21(8)(1981) provides for modification of dissolution decrees:

> The court may subsequently modify orders made under this section when there is a substantial change in circumstances. Any change in child support because of alleged change in circumstances shall take into consideration each parent's earning capacity, economic circumstances and cost of living.

Although the additional requirement—that the change in circumstances must have been outside the contemplation of the court that entered the original decree—was not specifically mentioned by the legislature, it is nevertheless an important prerequisite to obtaining a modification in Iowa, one which has consistently been recognized by the judiciary of this state. See In re Marriage of Stamp, 300 N.W.2d 275, 279 (Iowa 1981); Warren v. Warren, 191 N.W.2d 659, 660-61 (Iowa 1971); Huffman v. Huffman, 176 N.W.2d 859, 861 (Iowa 1970).

Applying this prerequisite to the modification request in the instant case, we find that two of the alleged changes of circumstances—Kristina's increasing financial needs as she matures and Terry's remarriage—were clearly within the trial court's contemplation when it entered the decree and consequently do not justify modification. Mears v. Mears, 213 N.W.2d 511, 516 (Iowa 1973)(remarriage of parent required to pay child support, and increased expenses as child matures, are common occurrences and therefore not beyond contemplation of trial court which

entered modification order). With regard to the third alleged change, however—inflation—we do not believe that even the most eminent economists envisioned the high rate of inflation that has affected Linda and compelled her to request an increase of child support. This drastic change of circumstances, coupled with the fact that the parties earn comparable incomes which have increased at a comparable rate since the entry of the dissolution decree, lead us to the conclusion that an increase in the child support award is warranted and is in fact necessary to maintain the standard of living that Kristina experienced prior to the parties' dissolution. See Iowa Code §§ 598.21(8), 598.21(4)(b), (c), (e), (f), (g), (i)(enumerating factors to be considered by the court in determining an appropriate custody award).

Accordingly, we hereby modify the trial court's decree by increasing the child support award from $100 per month to $175 per month, and by inserting the following cost of living adjustment:

> The child support payments shall be automatically adjusted each year on the anniversary date of the trial court's decree to reflect any increase or decrease in the National Consumer Price Index, as published by the United States Department of Labor for the most recent twelve-month period for which data is available, provided that Teddy's actual gross salary for that period has increased by at least the same percentage. If Teddy's gross salary increases by a lesser percentage, then the payments to Linda shall increase by this lesser percentage. However, this cost-of-living adjustment shall not be used to reduce Teddy's support obligation below the amount established in the modification of the trial court's decree, i.e., $175.

The decision is affirmed in all other respects.

AFFIRMED AS MODIFIED.

All judges concur except Donielson and Schlegel, J.J., who dissent.

DONIELSON, J. (dissenting)

I respectfully dissent. 384

I agree with the majority that the respondent's remarriage and the increasing financial needs of the child were matters within the contemplation of the trial court when the decree was entered. I disagree that inflation is a matter which was not within the contemplation of the trial court. The decree reflected what the parties had stipulated and submitted to the court. Furthermore, neither party requested a COLA provision in the stipulation or on appeal. Both parties were represented by counsel and arrived at their agreement fully apprised of all relevant facts. The decree was entered in September 1978, a time when inflation was a well-known feature of our economic condition. To say that, three years later, this factor should constitute a material and substantial change of circumstances is unreasonable.

Schlegel, J., joins this dissent.