IN THE COURT OF APPEALS OF IOWA

No. 2-424 / 92-112

IN RE THE MARRIAGE OF HAROLD H. WILMING
AND MARY LYNNE WILMING

FILED
DEC 29 1992
CLERK SUPREME COURT

Upon the Petition of

HAROLD H. WILMING,

Appellant,

And Concerning

MARY LYNNE WILMING, n/k/a MARY LYNNE McTAGUE,

Appellee.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Jr., Judge.

The husband appeals a district court order modifying his alimony obligation and denying his request for child support. **AFFIRMED.**

James L. Tappa of Spector, Tappa & Nathan, Rock Island, Illinois, for appellant.

John T. Bribriesco of John T. Bribriesco Law Offices, Bettendorf, for appellee.

Considered by Donielson, P.J., and Schlegel, J., and Perkins, S.J.*

*Senior Judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.

A decree of dissolution was entered for Harold and Mary Wilming on November 18, 1986. The decree restored Mary to her maiden name of Mary McTague. The decree provided that Harold, the petitioner, was to pay Mary, the respondent, the sum of $200 per week in alimony. The parties were granted joint custody of the two children who were still minors, Harold, then seventeen, and Gregory, then thirteen years old. Mary was given physical custody. Petitioner was ordered to pay child support of $100 per week.

In September 1988 petitioner made an application to amend the decree to terminate alimony and to terminate his obligation to pay child support because both Harold and Gregory were living with petitioner.

On March 6, 1989, after a two-day trial, the court terminated petitioner's obligation to pay child support and ordered respondent to pay $35 per week for the support of Gregory. The court found that petitioner was $3,500 behind in his child support obligation and "the respondent shall be given credit for the next 100 weeks on her child support obligation in the sum of $35 per week." The court refused to modify the decree so as to terminate the alimony provision.

In April 1991 petitioner filed an application to modify the decree to terminate alimony and to require the

respondent to pay child support for Gregory in an amount to be determined under the guidelines promulgated pursuant to Iowa Code section 598.21.

The court in its ruling on December 18, 1991, found that petitioner's financial condition had worsened because of the failure of his business and he was no longer getting unemployment benefits. This, in the opinion of the trial court, constituted such a change of circumstances as to justify a reduction of the alimony to $400 per month, commencing January 1, 1992. The trial court also found that respondent was earning more as a result of her employment efforts and that this was contemplated by the previous trial courts. Her increased earnings were not the basis for the court's decision to reduce the alimony.

In addition, the court found that by the time of trial there were no minor children for whom child support was required under chapter 598.

Petitioner has appealed. He has presented two issues for this court's review.

I. Denial of the petition to terminate alimony.

The trial court has reasonable discretion in determining if modification of a dissolution decree is warranted. In re Marriage of Shepherd, 429 N.W.2d 145, 147 (Iowa 1988). On appeal we do not disturb the trial court's conclusions unless there has been a failure to do equity. Id.

Modification of the alimony provisions of a dissolution decree is justified only if there has been some material and substantial change in the circumstances of the parties, financially or otherwise, making it equitable that other terms be imposed. In re Marriage of Skiles, 419 N.W.2d 586, 588 (Iowa App. 1987). The burden rests on the party seeking modification to establish such a change in circumstances by a preponderance of the evidence. Id. Such changes must be more or less permanent or continuous, not temporary, and must be such as were not within the knowledge or contemplation of the court when the decree was entered. In re Marriage of Bergfeld, 465 N.W.2d 865, 870 (Iowa 1991).

Petitioner's reduction in income from the date of tne original decree and from the date of the previous modification ruling is sufficient to justify the reduction of alimony from $200 per week to $400 per month. It is not justification for termination of alimony.

Petitioner Harold Wilming is a capable, trained mechanic. His skills are such that he has been an instructor in mechanics at the area community college. He was a highly paid mechanic for John Deere Company until the plant closed. His earning capacity has not diminished. His current financial condition may be self-inflicted, but there is not sufficient evidence to support that conclusion. The evidence does support the trial court's

decision to reduce the alimony, but not to terminate the alimony.

II. Denial of petitioner's application for child support.

To continue support of a child past the age of eighteen requires a provision in the dissolution decree that support continue. In re Marriage of Lindberg, 462 N.W.2d 698, 701 (Iowa App. 1990). In the absence of such a provision continuing child support, parents have no statutory obligation to support their children once they obtain the age of nineteen. Id.

At the time of the trial court's ruling in this case Gregory was no longer a minor. Furthermore, he was not attending school and was not living with petitioner. Child support for the period from the date notice of the modification was served upon respondent until Gregory finished school was discretionary with the trial court. There is ample evidence in the record to establish the soundness of the court's exercise of its discretion.

We affirm the district court. Costs of this appeal are assessed to Harold Wilming.

AFFIRMED.