FILED
SEP 20 1979
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA 491

IN RE THE MARRIAGE OF JOANN K. NELSON AND DOUGLAS R. NELSON

Upon the Petition of)
JOANN K. NELSON,)
Petitioner-Appellant,) Filed September 20, 1979
And Concerning)
DOUGLAS R. NELSON,) 183
2-62040
Respondent-Appellee.)

Appeal from Jasper District Court - Dale S. Missildine, Judge.

Petitioner appeals from trial court order denying her application for modification of prior decree of dissolution. AFFIRMED BY OPERATION OF LAW.

Michael J. Galligan and Laura L. Rodenburg, Des Moines, Iowa, for petitioner-appellant.

Roland D. Peddicord, Des Moines, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell and Carter, JJ. Johnson, J., takes no part.

PER CURIAM

Petitioner, JoAnn Nelson, appeals from trial court order denying her application for modification of the July 20, 1972 decree dissolving her marriage to respondent, Douglas Nelson. The issues presented on this appeal are whether JoAnn is entitled to (1) an increase in the alimony award provided in the original decree; (2) an increase in the child support provisions of the original decree; and (3) an allowance for her attorney fees in the trial court and on appeal of this modification proceeding.

This appeal was heard and considered by four judges of this court as a result of the recusation of one of the members thereof. As to the issues presented, two of the judges participating in this decision conclude that the order of the trial court should be affirmed as to the request for modification of alimony and child support for the reasons stated in the trial court order. Two judges of the court would modify the original decree by increasing alimony and child support. As provided in section 684.36(1), The Code 1977, the judgment being reviewed is affirmed by operation of law.

Attorney fees in the trial court and on appeal are not allowable in a proceeding to modify a final decree of dissolution. Dworak v. Dworak, 195 N.W.2d 740, 743 (Iowa 1972).

AFFIRMED.

Donielson & Carter, JJ., concur; Oxberger, C.J., and Snell, J., dissent.