IN THE COURT OF APPEALS OF IOWA

No. 2-608 / 92-193

FILED
FEB 02 1993
CLERK SUPREME COURT

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IN RE THE MARRIAGE OF MARY DINGEMAN AND DANIEL DINGEMAN

Upon the Petition of
MARY DINGEMAN,
Petitioner-Appellant,

And Concerning
DANIEL DINGEMAN,
Respondent-Appellee.

Appeal from the Iowa District Court for Marion County, Robert O. Frederick, Judge.

The wife appeals a district court's decision modifying the parties' dissolution decree as to child support, but refusing to modify other areas. **AFFIRMED.**

Richard A. Bartolomei of Bartolomei & Lange, Des Moines, for appellant.

Bert Bandstra, Knoxville, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

000130

PER CURIAM

Petitioner-appellant Mary Dingeman appeals from a dissolution decree modifying the December 13, 1988, decree that dissolved her marriage to respondent-appellee Daniel Dingeman. The trial court modified the decree to increase the child support Daniel was ordered to pay for the parties' three children. Mary contends on appeal that the trial court (1) did not modify all provisions of the decree; (2) did not correctly compute Daniel's income; (3) incorrectly ordered child support to be reduced when the second child completes high school; (4) failed to order Daniel to pay certain medical expenses; and (5) failed to set a visitation schedule. She asks for attorney fees on appeal. We affirm and deny her request for attorney fees.

When the parties were divorced in 1988, Mary was granted physical care of the parties' three children born June 1, 1971; May 23, 1975; and October 3, 1978. The provisions of the decree of dissolution were stipulated to by Mary and Daniel, and their stipulation was incorporated by the trial court in its decree. Daniel was ordered to pay $300 a month child support to be reduced $50 a month as each child completed high school. It was also provided the support would be reviewed each year and increased as the cost of living increased. Mary was required to maintain health insurance coverage on the children, and other medical expenses were to be paid one-half by each party. No visitation schedule was established.

Mary filed her petition for modification on March 19, 1991, and the decree modifying was entered in December 1991. By this time, the amount provided for in the original decree was reduced to $250 a month because only two children were eligible for support. In the modification decree, the court increased Daniel's child support to $350 per month and provided child support was to be reduced to 22.5 percent of Daniel's net monthly income when the second child completed high school. Daniel was also ordered to pay for repairs on the house Mary occupies that is owned by the parties as tenants in common. The trial court ordered each party to pay his or her own attorney fees.

Mary first contends the trial court did not modify all the provisions of the decree.

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). The trial court has reasonable discretion in determining whether modification is warranted, and that discretion will not be disturbed on appeal unless there is a failure to do equity. In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987). The principles enumerated in In re Marriage of Vetternack, 334 N.W.2d 761 (Iowa 1983), and applied in Kern are applicable here as well:

> A number of principles emerge from our cases: (1) there must be a substantial and material

000192

> change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been in the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762.

Mary bears the burden of showing the necessary change to support her request for modification. We consider the other issues she has raised on appeal accordingly.

Mary next contends the trial court incorrectly computed Daniel's net monthly income for child support purposes. Daniel's income fluctuates. Computing net monthly income of a person having a fluctuating income cannot be accomplished with complete accuracy. We find no reason to disturb the computation made by the trial court. See In re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991); In re Marriage of Miller, 475 N.W.2d 675, 680 (Iowa App. 1991).

We also note in the original decree Mary was granted possession and use of Daniel's interest in the family home until the youngest child completes high school or Mary remarries. Daniel does not have use of this home or the value of the asset.

Mary's third contention is the trial court should not have provided the child support be reduced by a percentage when the older of the two children reached majority.

The trial court determined when there was one child eligible for support, support should be 22.5 percent of Daniel's net monthly income. The 22.5 percent is the percentage Daniel would owe if his and Mary's incomes were applied to the charts. This is $262.80 a month. The trial court was correct.

Mary's last contention is the trial court should have set out a visitation schedule. Mary contends what she is asking for is not a change and the burden to show a change of circumstances does not apply.

There has been open visitation. The children, now sixteen and twelve, are of an age where specified visitation would be disruptive to their schedules. We affirm the trial court on this issue.

We have considered Mary's arguments on appeal and find that she failed to meet the necessary burden of showing a change of circumstances. Daniel has not cross-appealed. We affirm the trial court in its entirety. We assess all costs on appeal to Mary.

AFFIRMED.

Schlegel, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting):

I respectfully dissent.

At the time of the original decree in December 1988 Dan was taking home $965.03 monthly.

The record in my judgment established that currently Dan is taking home $1500.00. I would modify the trial court's decree by increasing his child support based on this figure.

Dan has received an annual bonus each of the years since the original decree. Under the ruling set forth in In re Marriage of La Lone, 469 N.W.2d 689 (Iowa 1991) we must consider his annual bonus in computing child support guidelines.

Additionally I would set specific visitation terms. The original decree did not set any visitation. No change of circumstances would be required. However I believe Dan's admitted continued "romantic interest" in Mary and the conflicts it has caused require setting specific terms of visitation in the best interest of the children.

I would calculate the unreimbursed health care expenses that the original decree required Dan to pay and award Mary a judgment against Dan in that amount.

I would award Mary appellate attorney fees.