FILED
OCT 07 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANITA A. MANDELBAUM and MORRIS MANDELBAUM III

Upon the Petition of
ANITA A. MANDELBAUM,
Appellee,
And Concerning
MORRIS MANDELBAUM III,
Appellant.

October 7, 1977

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2-59173

Appeal from Polk District Court - Harry Perkins, Judge.

Appeal from a judgment denying respondent's application for modification of the alimony and child support provisions of a dissolution decree. Affirmed.

Michael J. Galligan and Richard A. Malm of Dickenson, Throckmorton, Parker, Mannheimer and Raife, of Des Moines, for appellee.

Patterson, Lorentzen, Duffield, Timmons, Irish and Becker, of Des Moines, for appellant.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an appeal from an order and final judgment denying the application of respondent, Morris Mandelbaum III, to modify and reduce his alimony and child support obligations under an August 16, 1972 decree dissolving his marriage to petitioner, Anita Mandelbaum. We affirm the trial court.

The legal principles involved in a proceeding of this type were recently stated in In re Marriage of Full, 255 N.W.2d 153, 158-59 (Iowa 1977) involving an application to reduce alimony. Power to modify the economic provisions of dissolution decrees is provided in section 598.21, The Code. It has been consistently held, however, that the applicant (here Morris) has the burden to establish that there has been a material and substantial change in circumstances since the date of the original decree which renders the proposed change expedient. In Re Marriage of Full, supra, at 158-59; Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). The circumstances which have changed must be those which were not within the contemplation of the trial court when the original decree was entered. Ibid.; Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974).

The circumstantial changes which are relied upon by Morris in seeking modification on our de novo review include the following: (1) the mortgage on the home awarded to Anita is now paid in full; (2) the income received from certain trusts established for child support has increased; (3) Morris's expenses have increased; (4) the value of the assets Morris received under the original decree has decreased; and (5) Anita, who was unemployed at the time of the decree, is now gainfully employed earning $12,000 - $13,000 per year. Our review of the record leads us to the conclusion that items (1) - (4), inclusive, are not shown to be of such a material nature as to warrant reduction of Morris's alimony or child support obligations. Similarly, we do not deem that item (5) requires serious consideration as to the requested reduction in child support. Item (5) is troublesome, however, as it affects Morris's continuing obligation to pay alimony under the decree.

Anita seeks to avoid any reduction in alimony based upon her changed employment situation on two theories; (1) that such employment was contemplated at the time of the original decree; and (2) that while the monthly payments to her are labeled as alimony in the dissolution decree they are in fact an equalization of the property settlement wherein Morris received assets valued at approximately $493,448

(subject to debts of about $74,000) and she received assets valued at approximately $125,000 (subject to debts of approximately $5400). The first theory, although having some support in the evidence, requires certain assumptions as to the success of Anita's chosen pursuit of the accounting profession which may or may not have been a matter of contemplation by the dissolution court in 1972. We conclude, however, that the trial court should be affirmed on the basis of the second theory. We have examined the provisions of the original decree in light of the stipulation of the parties and the circumstances under which it was made and conclude that, for the same reasons applied in Knipfer v. Knipfer, 259 Iowa 347, 144 N.W.2d 140 (1966), the financial provision for Anita in the sum of $416.66 per month is not subject to modification.

AFFIRMED.