FILED
SEP 16 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-352 / 93-1751

IN RE THE MARRIAGE OF KATHLEEN COPPOCK AND JAMES COPPOCK

Upon the Petition of
KATHLEEN COPPOCK,

Appellee,

And Concerning
JAMES COPPOCK,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge.

James challenges the order refusing to modify the parties' dissolution decree to reduce his alimony obligation. **AFFIRMED.**

Michael J. Murphy and Mathew V. Stierman of the Rodenburg Law Offices, P.C., Council Bluffs, for appellant.

Richard D. Crotty, Council Bluffs, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

HUITINK, J.

James Coppock appeals the district court's order denying his request for modification of his alimony obligation. We affirm.

Kathleen and James Coppock's marriage was dissolved in May 1992 after twenty-six years. At that time James was a sales representative for Pepsi-Cola and earned approximately $49,500 per year. Kathleen had serious medical problems, including a heart condition, thyroid problems, and diabetes. The decree ordered James to pay rehabilitative alimony in the amount of $700 per month until Kathleen reached age sixty-five.

On December 1, 1992, Pepsi terminated James' employment. He received severance pay until August 24, 1993. On September 9, 1993, James filed a petition for modification seeking to eliminate his monthly alimony obligation. The court found James had not shown a change of circumstances which warranted modification.

James contends his involuntary reduction in earnings coupled with his long-term unemployment is a sufficient change in circumstances which warrants a modification of his alimony obligation. We disagree.

We review equity actions de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

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. Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa App. 1979). The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of the evidence. Mears v. Mears, 213 N.W.2d 511, 513 (Iowa 1973); Thayer, 286 N.W.2d at 223. Circumstances that have changed must be those that were not contemplated by the trial court when the original decree was entered. In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). Such changes must be more or less permanent or continuous, not temporary. In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983). A party's current inability to pay is less of a consideration than their long-term earning capacity. See In re Marriage of Vetternack, 334 N.W.2d 761, 763 (Iowa 1983).

Based on our de novo review of the record, we conclude James has not met his burden of proof. There is abundant evidence supporting the district court's finding that James' termination was within the contemplation of the court at the time the decree was entered. Moreover we are not persuaded that James' earning capacity has diminished to the extent he claims. His bald assertions regarding his employment opportunities and his inability to find any gainful employment are of doubtful sincerity.

We are not prepared to accept these assertions as sufficient reasons to grant James the relief requested. If we were to accept them, then as a practical matter, the burden of proof would fall to Kathleen to prove otherwise. This result would be inequitable. The district court is therefore affirmed on this issue.

Kathleen requests attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). James is ordered to pay $250 toward Kathleen's attorney fees.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. Costs of this appeal are assessed to James.

AFFIRMED.