**IN THE COURT OF APPEALS OF IOWA**

No. 8-654 / 98-0291

**IN RE THE MARRIAGE OF TERRY RICKART AND DARLENE RICKART**

**Upon the Petition of TERRY RICKART,**

Petitioner-Appellant,

**And Concerning DARLENE RICKART,**

Respondent-Appellee.

FILED
JAN 27 1999
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley, Judge.

Petitioner appeals a district court order denying his petition for modification of his alimony obligation. **AFFIRMED.**

Kevin J. Kennedy of Kennedy & Kennedy, New Hampton, for appellant.

Ralph A. Smith of Noah, Smith & Schuknecht, P.L.C., Charles City, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

**PER CURIAM**

Petitioner-appellant Terry Rickart appeals a district court order denying his petition for modification of his alimony obligation. Terry sought a reduction of alimony due to loss of business income. We affirm.

The district court entered a decree of dissolution for Terry and Darlene Rickart in January 1994. The decree incorporated the parties' stipulation. Terry was ordered to pay alimony of $950 per month until April 1, 2003. At the time of the dissolution, Terry owned a business, Band Box Janitorial Services, which had net annual income of about $51,500. Darlene owned a bridal shop which had minimal financial viability.

Band Box had a steady increase in income from 1994 to 1996. The company had annual net income of $68,751 in 1994, $74,867 in 1995, and $80,306 in 1996. The company had two main clients, Solvay Animal Health and Salsbury Chemicals. In 1996, Salsbury came under new management and the company decided to hire a different cleaning company. Terry was not given an opportunity to bid on the account for 1997, and his services with Salsbury were terminated as of December 31, 1996.

In addition, in April 1997, Solvay was acquired by another company. The company underwent some downsizing, which caused a reduction of required janitorial services. For the first ten months of 1997, Terry had net income of $36,375, which would give him projected net income for 1997 of about $43,650. Due to his reduction in income, Terry filed an application to modify his alimony obligation.

Darlene also had some financial problems during 1997. She closed her business and liquidated the inventory. Darlene had surgery on her foot and was

unable to work at the time of the modification hearing. She felt, however, her health would be sufficiently recovered in a few weeks so she could seek employment. Darlene was fifty-nine years old at the time of the modification hearing and Terry was fifty-seven.

The district court determined Terry had failed to show a permanent change in circumstances. The district court found Terry had not presented sufficient evidence to show his decrease in income in 1997 was more than a temporary setback. The district court assumed Terry could probably solicit other customers in order to increase his income potential and denied his request to modify the dissolution decree.

Terry has appealed. He contends he has sufficiently established a substantial financial change in circumstances which would necessitate a reduction in his alimony obligation.

Our scope of review in dissolution of marriage cases, which are equitable in nature, is de novo. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997).

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 Van Doren,* 474 N.W.2d 583, 586 (Iowa App. 1991). The party seeking the modification must establish the change in circumstances by a preponderance of the evidence. *Id.* The change in circumstances must be more or less permanent or continuous, not temporary. *Id.*

The supreme court has noted three trends in modification cases: (1) a growing reluctance to modify decrees; (2) current inability to pay has become less a consideration and long-range capacity to earn money has become more a consideration; and (3) any voluntariness in diminished earning capacity has become increasingly an impediment to modification. *In re Marriage of Walters*, 575 N.W.2d 739, 741 (Iowa 1998) (citing *In re Marriage of Vetternack*, 334 N.W.2d 761, 763 (Iowa 1983)). Thus, when a party's inability to pay alimony is self-inflicted or voluntary, it will not constitute a ground for reduction of future payment. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987).

Terry contends he has sufficiently shown the reduction of his income was permanent. He states when he lost his business with Salsbury, he lost about 26% of his income. Terry testified he was always looking for new accounts, but believed few new accounts were available. He asserts there is not any single large business in Charles City to replace this volume of income. He also asserts it would take a large number of small businesses to make up this amount. Terry is reluctant to look for business outside of the Charles City area because he feels it would reduce the quality of his work. There was no evidence of anything specific Terry had done to try to solicit new customers. He stated he would like to regain the Salsbury contract, but had not contacted them within the last six months.

The district court concluded Terry had not shown his present decrease in income was permanent. Terry had shown a steady increase in income until 1997. In

the past, Terry has lost some customers and gained others. The district court found Terry had the business competency and managerial skills to increase his business's income potential. The district court found Terry should be able to solicit new customers and suggested Terry could look outside the Charles City area.

As the party seeking the modification, Terry has the burden to show, by a preponderance of the evidence, a substantial change in circumstances. While he has shown a reduction in income for 1997, he has not shown a reduction in his earning capacity. Terry's loss of income was involuntary, but his decision not to aggressively seek new accounts was voluntary. For these reasons, we affirm the decision of the district court denying Terry's application for modification of his alimony obligation.

**AFFIRMED.**