

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JACK DEAN MAGEE AND DOROTHY JEAN MAGEE

Upon the Petition of)

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JACK DEAN MAGEE,)

Filed September 6, 1984

Petitioner-Appellant,)

And Concerning)

DOROTHY JEAN MAGEE,)

4-205
83-1051

Respondent-Appellee.)

Appeal from the Iowa District Court for Clayton County - L. John Degnan,
Judge.

Petitioner appeals from the trial court's denial of his petition for
modification of the parties' 1981 dissolution decree to reduce his future alimony
obligation. **AFFIRMED.**

James H. Reynolds, Dubuque, Iowa, for petitioner-appellant.

R. L. Donohue, West Union, Iowa, for respondent-appellee.

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

SCHLEGEL, J.

Petitioner, Jack Magee, appeals from the trial court's denial of his petition for modification of the parties' 1981 dissolution decree to reduce his future alimony obligation. He asserts that, contrary to the trial court's ruling, he has shown a substantial change of circumstances since the entry of the decree which warrants a modification of the decree so as to reduce his future alimony obligation. We affirm.

Jack petitioned on March 30, 1982, for a modification of the parties' 1981 dissolution decree seeking a reduction of his alimony obligation. The parties had been married approximately thirty years and had several adult children. The decree incorporated the parties' stipulation regarding alimony for Dorothy. Jack was directed to pay \$17,500 per year until his retirement from TWA or another airline. (Jack was then 55 years old and a Chicago-based pilot with TWA.) Jack was to have TWA deduct the alimony from each paycheck and pay it directly to Dorothy. He was not to voluntarily retire until he reached age 62. After his retirement, the alimony was to be 50% of his retirement benefits. The amount of alimony was to automatically increase when Jack received a salary increase or an increase in retirement benefits, in an amount proportional to the increase. The district court was to enter an ex parte modification order when notified of any such increase.

Jack asserted as a change in circumstances that his income had decreased. He also presented evidence at trial concerning his remarriage and his new wife's illness and resulting medical bills. The trial court refused to reduce Jack's alimony obligation; it stated that Jack had not shown a substantial change in circumstances since the decree, because his income had actually increased.

Our review is de novo. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977).

Modification of the alimony provision 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 Jensen, 251 N.W.2d 252, 254 (Iowa 1977); Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973). 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). Circumstances that have changed, to justify modification of alimony, must be those that were not within the contemplation of the trial court when the original decree was entered. In re Marriage of Full, 255 N.W.2d at 159. Moreover, the change in circumstances must be continuous, not temporary. Spaulding v. Spaulding, 204 N.W.2d at 635.

Much of Jack's attack on the provisions of the decree concern the issue of whether or not the decree was equitable when entered. The record indicates that prior to this action, Jack unsuccessfully attempted to have the property provisions of the decree set aside pursuant to Iowa Rule of Civil Procedure 252. Jack testified on cross-examination that his gross income had increased since the decree but that his deductions left him less net income. We note that his exhibit listing his deductions from gross income failed to reduce his tax deductions by the amount of tax refunded to him. The record also indicates that he received expense checks from his employer covering the expenses incurred in his employment. Jack testified that there had been practically no change in his deductions taken to arrive at net income and that he had received "a bad bargain" in making the stipulation which was subsequently incorporated into the dissolution decree.

Jack has failed to show a substantial change in circumstances as a result of a reduction in income. We do not reach the issue of whether the amount and duration of the alimony award is equitable. We do not have the power to modify a dissolution decree merely because it is inequitable. Smith v. Smith, 254 Iowa 1120,

1121, 120 N.W.2d 448, 449 (1963); Iowa Code § 598.21(8). That is a matter for appeal in the original action.

Jack also asserts that his new wife's illness and resulting loss of income constitutes a substantial change in circumstances. Remarriage of the spouse obligated to pay support payments, coupled with the obligations assumed in the new marriage, does not alone constitute such a change in circumstances justifying modification of the decree. Smith v. Smith, 254 Iowa at 1122, 120 N.W.2d at 450. We consider the contributions of Jack's new wife as it relates to Jack's overall financial condition. See Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974).

Jack remarried shortly after the decree was entered in July, 1981. His new wife was employed until 1982 until an eye condition forced her to retire. Jack testified that uninsured medical bills and dental expenses were approximately one hundred dollars per month. We do not believe these expenses are sufficient to constitute a substantial change in circumstances, particularly in light of his new wife's purchase of a private airplane for their use. The evidence clearly indicates that she is able to pay for her own expenses.

Accordingly, Jack has failed to establish a material and substantial change in circumstances making it equitable that other terms be imposed. We reject Jack's allegation that the court does not have jurisdiction of this action as meritless. The trial court's decision is affirmed.

AFFIRMED.