

IN THE COURT OF APPEALS OF IOWA

FILED

NOV 29 1988

IN RE THE MARRIAGE OF BARBARA KRAUS AND ROBERT KRAUS SUPREME COURT

Upon the Petition of)

BARBARA KRAUS,)

Petitioner-Appellee,)

And Concerning)

ROBERT KRAUS,)

Respondent-Appellant.)

205

8-387
87-1802

Appeal from the Iowa District Court for Lee County (No. 182(S)0581) - William S. Cahill, Judge.

Husband appeals, and the wife cross-appeals, from the modification of a dissolution decree. **AFFIRMED AS MODIFIED.**

George E. Wright, of Napier, Wright & Wolf, Fort Madison, for respondent-appellant/cross-appellee.

Margaret T. Lainson, of Meardon, Sueppel, Downer & Hayes, Iowa City, for petitioner-appellee/cross-appellant.

Heard by Donielson, P.J., and Sackett and Habhab, JJ., but decided en banc.

SACKETT, J.

206

At issue is the trial court's order increasing the child support and alimony appellant-respondent Robert Kraus was ordered to pay under his 1981 dissolution decree. Robert contends the increase should not have been ordered. Appellee-petitioner Barbara Kraus contends the child support award should be larger. We affirm as modified the order increasing alimony. We modify the order on child support to increase the award made by the trial court.

The parties' twenty-year marriage was dissolved in 1981. Robert was ordered to pay Barbara \$50 per week child support for each of two children in her care and alimony of \$400 per month for one year and then \$50 per month until Barbara's death or remarriage. Robert assumed care of the third child. Barbara was not ordered to pay him child support.

In 1984 the alimony was modified to \$300 per month for two more years and then to revert to the \$50 per month. In March 1986, when the alimony was to revert to \$50 per month, Barbara filed asking the court to increase alimony and child support. On November 12, 1987, the trial court modified the alimony retroactively to the date of her filing the petition for modification. Alimony was increased to \$550 per month and the child support was increased to \$75 per week for the minor child still in Barbara's care. The second child in Barbara's care had

reached her majority. The third child is a minor and remains in Robert's care. This appeal followed.

I.

Robert contends Barbara has not met the burden necessary to increase her alimony award. To increase the alimony award Barbara has the burden to show there has been a substantial change in circumstances occurring after the entry of the decree. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1978); Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973).

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 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. Id.; 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 contemplation of 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).

The knowledge of the trial court at the time the award is made is the basis for determining whether there has been a change of circumstances. Full, 255 N.W.2d at 159; Leo v. Leo, 213 N.W.2d 495, 496 (Iowa 1973). The original decree is entered with a view to reasonable and ordinary changes that may be likely to occur in the relations of the parties. Mears, 213 N.W.2d at 514.

Robert contends there is no material change. In 1983 his income was \$71,187. In 1985 it was \$29,853 and in 1986 it was \$65,728. He has a net worth of approximately \$150,000. The 1984 modification decree found (1) Barbara had additional medical problems, (2) the medical problems caused her to spend monies she received in the dissolution for medical and living expenses rather than to allow her to obtain training to become employable. Robert contends the record shows no more than a continuation of medical problems known to the court at the time of the dissolution and the first modification hearing.

On our de novo review we agree the evidence does not show a substantial change in Barbara's medical condition or her ability to obtain employment. We do find, however, Barbara is not able to be employed outside the home. Other than a two-month job at a local drug store, she had no outside employment since she was a sophomore in high school. Barbara spent nearly twenty years married to Robert. While married to Robert she assumed responsibility

for the home and family. Barbara left the marriage with few job skills, no experience in the outside job market. She did not earn income subject to social security taxes. She does not have the social security disability benefit a disabled person has who paid social security taxes. 20 C.F.R. § 404.310 (1985).

Robert on the other hand has moved forward, continues his professional career and enjoys an affluent lifestyle while his former wife and child live on food stamps. The equities and applicable case law dictate that Robert provide additional support to Barbara.

The Iowa court in Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974) determined the fact that the wife's physical condition, although materially unchanged since the date of the divorce, had occasioned additional medical expense and made it increasingly difficult to get and keep employment, the additional cost of educating her daughter and her former husband's increased earnings together with the inroads of inflation supported a modification. Applying Page, we find sufficient evidence to support a modification. We modify the trial court's order and provide Barbara shall receive alimony of \$300 per month retroactive from the date of filing her petition through December 1997.

II.

210

Robert contends the child support should not have been modified. Barbara argues it is not sufficient. Child support awards may be modified when there is a substantial change in circumstances. Iowa Code § 598.21(8) (1987). The court contemplating a change in circumstances shall consider each parent's earning capacity, economic circumstances, and the cost of living. Id. We take judicial notice of the reduced purchasing power of the dollar and the increased needs of a growing child. Spaulding v. Spaulding, 204 N.W.2d 634, 636 (Iowa 1973); Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972); In re Marriage of Brands, 392 N.W.2d 855, 857 (Iowa App. 1986). Both parties have an obligation to support their children in proportion to their ability and circumstances. In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984).

Applying these factors, we determine the modification should be made. We find, however, the amount ordered is not sufficient and increase the child support to \$100 per week.

We award Barbara \$750 toward her attorney fees on appeal. Appellate costs are taxed to Robert.

AFFIRMED AS MODIFIED.

All judges concur except Donielson, J., and Hayden, J., who dissent.

DONIELSON, J. (dissenting in part)

211

On the issue of child support, I would affirm the 1987 order for \$75 a week. An increase in payments was not requested in the 1984 modification; therefore, I considered the substantial change in circumstances since the 1981 decree. Iowa Code § 598.21(8).

Barbara now only has one child eligible for support payments, where before she was receiving \$100 a week for two children. There has been a change in the parents' ability to pay and an increase in the costs of raising a child. Therefore, I would affirm the 1987 modification making child support \$75 a week.

HAYDEN, J. (dissenting)

I respectfully dissent.

212

I find no material change of circumstances in either Barbara or Robert that was not within the contemplation of the trial court and I would reverse on the issue of modifying the alimony.

I agree with Judge Donielson's dissent on the child support issue.