

IN THE COURT OF APPEALS OF IOWA

No. 0-207 / 89-788

FILED

JUL 26 1990

CLERK SUPREME COURT

IN RE THE MARRIAGE OF GRACE E. PRUSS AND FRANCIS J. PRUSS

Upon the Petition of GRACE E. PRUSS,

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Appellee,

And Concerning FRANCIS J. PRUSS,

Appellant.

Appeal from the Iowa District Court for Linn County,
Thomas M. Horan, Judge.

The respondent appeals from the district court's denial
of his application to modify the dissolution decree.

AFFIRMED.

Francis J. Pruss, pro se.

T. Todd Becker of Tom Riley Law Firm, P.C., Cedar
Rapids, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J.

Respondent-appellant seeks review of the district court's denial of motions for enlargement of findings of fact and conclusions of law and for a new trial. Appellant asserts that the district court was in error in failing to modify provisions of a dissolution decree providing for spousal support payments to the appellee. He argues that various events, including a drop in crop prices and a levy by appellee, constitute a "substantial change in circumstances," Iowa Code § 598.21(8), such that he is entitled to a modification of the divorce decree. Because we find that appellant voluntarily created his difficulties, he can show no positive wrong or injustice in the enforcement of the unmodified decree. We therefore affirm the district court's overruling of appellant's motions.

The marriage of Francis Pruss and Grace Pruss was dissolved on October 21, 1986. Appellant Francis Pruss is a farmer and had practiced law for over thirty years. The dissolution decree provided, among other things, that appellant was to pay \$1,000 per month as spousal support and \$500 per month as child support for the couple's sixteen-year-old daughter Sharon. As part of the property division, the trial court awarded several farm and nonfarm properties to appellant, but required him to pay some marital debts, including contract payments on one farm retained by Grace.

In April 1987, upon appellant's failure to make the required support and debt payments, Grace levied upon one of appellant's farms. Grace obtained a sheriff's deed to the Raim Farm, credited \$39,509.57 of the value of the farm toward the judgments she held against Francis, and put the farm up for sale. To date, other than this credit, appellant has made no other payment on the indebtedness or spousal support obligations since the entry of the original decree.

In the fall of 1987, appellant transferred to Judith M. Rodgers and Steve Rodgers, his daughter by another marriage and her husband, a \$100,000 farm. At that time appellant gave a property known as the Saxon Farm to City State Bank to secure indebtedness owed to it. Appellant also entered into an oral agreement with the Federal Land Bank whereby the unpaid interest on his Peck and Shupitar farms would become a lien upon the Saxon Farm. Grace, however, refused to subordinate her liens, and the Federal Land Bank foreclosed on the Peck and Shupitar farms.

In April 1988, appellant held a public auction to sell some of his farmland and to rid himself of some of his indebtedness to the Federal Land Bank and the City State Bank, but all of the bids were considerably below market value. In 1988, the Monticello State Bank refused to extend an operating loan to appellant, who then sold farm machinery to raise the necessary funds.

Appellant brought the present action on September 22, 1988, seeking modification of his spousal and child support obligations. The trial court entered its ruling on March 23, 1989. It determined that appellant should be given credit for social security benefits paid to appellee which covered approximately eighty percent of his monthly child support obligation. The court found, however, that appellant's other contentions were without merit. Appellant filed alternative motions to enlarge and amend or for a new trial, both of which the trial court overruled.

Appellant contends that his debt load has increased by \$225,000 and that his income has dropped by at least \$24,000. He primarily argues that his financial problems necessitating a modification are caused by appellee's refusal to subordinate her liens and by reduced crop prices and drought. He also makes arguments, which we find without merit, pertaining to the method the trial court used to calculate his ability to pay and various factors that he contends the trial court failed to consider. Appellee disputes both the amount and cause of appellant's financial problems and argues that she should not be held to suffer. We agree with appellee.

Pursuant to Iowa Rules of Appellate Procedure 4, our review of this equitable proceeding is de novo. Under rule 14(f)(7), though we are not bound by the trial court's factual findings, we give weight to them. "The trial court has reasonable discretion in determining whether

modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

In seeking review, appellant relies on the district court's discretionary ability to modify support obligations under Iowa Code section 598.22(8) upon a showing of "substantial change in circumstances" and its duty in so doing to consider "[c]hanges in the employment, earning capacity, income, or resources of a party." Iowa Code § 598.22(8)(a) (1989).

The principles enumerated in In re Vetternack, 334 N.W.2d 761 (Iowa 1983), and applied to spousal support obligations in Kern, 408 N.W.2d at 389, are applicable here as well. The Vetternack Court stated:

A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762 (citing Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978) (requiring positive wrong or injustice as a result of changed conditions)). After a review of thirteen cases, the Vetternack court also notes the following trends:

(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 of a consideration; and
(3) any voluntariness in diminished earning capacity has become increasingly an impediment to modification.

Id. at 763.

Even if we assume a substantial and material change of appellant's circumstances after the entry of the decree, we still must be able to find that enforcement of the original decree would work positive wrong or injustice and that the conditions cited by Appellant are permanent or continuous. Id. at 762. Appellant did not, or could not, seriously contend that the trial court was unaware or failed to consider crop price fluctuations that, as appellee notes, "have been endemic to the Iowa farm economy for decades." Appellee's brief at 6.

We agree with the trial court that fluctuations in crop prices are temporary conditions. Appellant agrees, but, citing sections 598.22(a) and (k) of the Code, also contends that the effects of price fluctuations were permanent and affect his ability to pay. We are not convinced. Although the proper factual circumstances might require a modification, such circumstances do not appear here. Admitting that he is unsure of his true financial circumstances and that prices have improved, appellant has failed to demonstrate adequately the long range impact on his finances. Moreover, in this commodity sale situation

appellant had control over the time of sale, and although an unfavorable price may have reduced his willingness to sell, he certainly is not guaranteed the best price for his crop.

Appellant correctly cites Ellis v. Ellis, 262 N.W.2d 265 (Iowa 1978), for the proposition that "[a] decree is not to be modified unless its enforcement will be attended by positive wrong or injustice as a result of changed conditions." Id. at 267. Appellant would invoke a corollary that a decree should be modified if it can be shown that a positive wrong or injustice would attend a failure to modify.

Appellant neglects, however, the dispositive principle cited by the Ellis court, viz., "[w]hen a person's inability to pay alimony or child support is self-inflicted or voluntary, it will not constitute a ground for reduction of future payments." Id. at 268 (citations omitted). We find that appellant, an attorney with over thirty years of experience at the bar, failed to make monthly court-ordered payments and that this was a catalyst for many of his financial woes. Furthermore, once in financial difficulties, appellant intentionally depleted his assets by gratuitously transferring a farm to his daughter and her husband. Appellant had control over the sale of his assets and could, as he demonstrated, raise necessary cash by their sale. See In re Kern, 408 N.W.2d 387, 390 (Iowa App. 1987) (petitioner not entitled to reduction in spousal

support payments because current inability to pay caused by his "own fault, his voluntary wastage and dissipation of his [assets]"); see also id. (spousal support "obligations should not be reduced where . . . [Appellant] has valuable assets at his disposal to satisfy [Appellee's] support needs.").

Having reviewed all of the facts and arguments, we find that the trial court's order denying modification of the October 21, 1986, decree should be affirmed.

AFFIRMED.