**IN THE COURT OF APPEALS OF IOWA**

No. 6-460 / 95-1394

**IN RE THE MARRIAGE OF GERALD DEAN McCARTY AND BEVERLY JEAN McCARTY**

FILED
AUG 30 1996
CLERK SUPREME COURT

Upon the Petition of
**GERALD DEAN McCARTY,**
Appellant,

And Concerning
**BEVERLY JEAN McCARTY,**
Appellee.

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Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Judge.

Gerald McCarty appeals the district court's denial of his application for modification of the alimony provisions of the parties' dissolution of marriage decree.

**AFFIRMED.**

John T. Bribriesco and William J. Bishop of the John T. Bribriesco Law Offices, Bettendorf, for appellant.

James L. Tappa of Spector, Tappa & Nathan, Rock Island, Illinois, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

**PER CURIAM**

This is an appeal by a husband claiming the district court should have modified the parties' dissolution decree to eliminate his alimony obligation. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Gerald and Beverly McCarty were divorced on May 12, 1992. The decree provided Gerald would pay Beverly $50 per week in alimony if she earned less than $150 per week, and $35 per week if she earned more than $150 per week. All alimony was to cease upon Beverly's full-time employment, which was defined as forty hours per week.

In 1994, Beverly was employed as a full-time, temporary employee at Oscar Mayer. She quit after two weeks because she could not physically handle the job. She now works 37.5 hours per week at Mosenfelder Design and Maintenance and Janitorial, where she has annual income of about $10,650, and earns $204 per week. Gerald is employed at Dahlen Transport, where he has annual income of $15,600.

On September 22, 1994, Gerald filed an application for modification, asking to have his alimony obligation eliminated due to Beverly's full-time employment. The district court found Beverly earned more than $150 per week, but she did not work forty hours per week, and thus, Gerald should pay alimony of $35 per week.

Gerald has appealed. He first contends his alimony should be eliminated because Beverly worked full-time at Oscar Mayer. To justify a modification of a dissolution decree, the changed circumstances relied upon must be material and

substantial, not trivial, and more or less permanent or continuous, not temporary. *In re Marriage of Bethards*, 526 N.W.2d 871, 874 (Iowa App. 1994). We conclude Beverly's employment at Oscar Mayer was a temporary change in circumstances.

Gerald also contends Beverly's present employment at Mosenfelder should be considered full-time because she is at work forty hours per week, although she is only paid for 37.5 hours because she is not paid for her lunch break. The dissolution decree specified full-time employment was employment of forty hours per week. Beverly does not work forty hours per week, and we agree with the district court that under the terms of the dissolution decree Gerald's alimony obligation should not be terminated.

Beverly seeks appellate attorney fees. 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 Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine Gerald should pay $500 for Beverly's attorney fees for this appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Gerald.

**AFFIRMED.**