FILED
NOV 2 9 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-466 / 90-62

IN RE THE MARRIAGE OF CAROL ANNETTE WOODWARD AND ROBERT DONALD WOODWARD

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Upon the Petition of

CAROL ANNETTE WOODWARD,

Appellee,

And Concerning

ROBERT DONALD WOODWARD,

Appellant.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Robert appeals the district court's dismissal of his application to modify the parties' dissolution decree. **AFFIRMED.**

Gregory J. Epping, Cedar Rapids, for appellant.

Douglas C. Meyer of Thorson & Meyer, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Hayden, J., and Perkins, S.J.*

*Senior Judge from the Polk County District Court serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.

The respondent, Robert Woodward, appeals the judgment of the district court denying his petition to modify the original dissolution decree providing $35 per week in alimony. We affirm.

Robert and Carol Woodward were married on July 28, 1962. The parties had one child, Scott, who was born in 1966 and is now emancipated. During the parties' marriage, Carol was employed at various times outside of the home as a factory worker, waitress and cook. At the time of trial, Carol was employed as a cook at $3 per hour, earning approximately $90 to $100 per week. Robert has been employed at the Men's Reformatory in Anamosa for over twenty years. With supplemental income from part-time jobs, Robert earned approximately $21,000 per year at the time of trial.

The petition for dissolution was filed on May 16, 1983, and was tried on January 9, 1984. The decree was entered on February 2, 1984. Pursuant to the decree, Carol received custody of Scott, and Robert was ordered to pay $90 per week in child support. Robert was additionally ordered to pay Carol $35 per week in alimony. Robert was awarded the parties' home, and in lieu thereof was ordered to pay Carol a lump sum property settlement of $28,650, to be paid on or before September 1, 1985.

On April 17, 1989, Robert filed a petition for modification of the original decree, alleging that his alimony obligations should be terminated since Carol was now employed at Rockwell earning over $1,300 per month. At trial, Carol testified she had been laid off several times the past year, and was potentially scheduled to be laid off in the spring of 1990. Carol also testified that Robert had failed to pay approximately $11,000 on the $23,650 lump sum property settlement. Carol pointed out Robert's income had increased to over $24,000. The trial court ruled there had not been a substantial change in circumstances warranting a modification. Robert has appealed.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Pursuant to Iowa Code section 598.21(8) (1989), "[T]he court may subsequently modify orders made under this section when there is a substantial change in circumstances." Thus, the modification of an alimony award is proper only when there has been a material and substantial change in the circumstances of the parties, making it equitable that different terms be fixed. In re Marriage of Sjulin, 431 N.W.2d 773, 776 (Iowa 1988); 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. In re Marriage of Skiles, 419 N.W.2d 586, 588 (Iowa App. 1987). 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. Id. Such changes must be more or less permanent or continuous, not temporary. Id.

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. In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). The original decree is entered with a view to reasonable and ordinary changes that may be likely to occur in the relation of the parties. Mears v. Mears, 213 N.W.2d 511, 514 (Iowa 1973).

Robert contends his alimony obligations should cease since Carol's income has dramatically increased. Robert maintains he has remarried and is supporting a new wife as well as her two children. Robert points out his new wife receives no support from her former husband. Robert argues Carol accepted title to the marital home and sold it for $28,000, Carol receiving $13,000 from the sale proceeds. Robert notes Carol filed a partial satisfaction of payment for $24,839.46. Robert maintains the circumstances are now such that alimony should be discontinued. We disagree.

The record reveals the original trial court was aware of Carol's work-related skills at the time of the dissolution decree, noting Carol's experience could result in her working in a factory, or as a cook or waitress. Given Carol's poor pay at the time of trial, the trial court undoubtedly contemplated at some time in the future Carol would need more than her meager salary in order to survive. The trial court recognized Carol had work skills commensurate with factory work, and recognized this would result in Carol receiving a higher income.

We also note while Carol took title to the home, she only received $13,000 of the judgment awarded her, even after sale of the home. Carol also received no interest on this money as contemplated by the original decree. Additionally, Carol's job at Rockwell is not entirely secure, having been laid off a number of times during the past year. We also note Carol and Robert were married nearly twenty-three years.

We believe that when considering Carol's uncertain job future, the low monthly payments of alimony, and Robert's greater earning capacity, we find the trial court correct in refusing to grant Robert's petition to modify.

AFFIRMED.