

FILED

FEB 23 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN RE THE MARRIAGE OF JOYCE KAY ONTHANK and DONALD ONTHANK, JR.**

Upon the Petition of)

JOYCE KAY ONTHANK,)

Filed February 23, 1983

Petitioner-Appellee,)

And Concerning)

2-478
2-67985**DONALD ONTHANK, JR.,**)

Respondent-Appellant.)

Appeal from Polk District Court - Luther T. Glanton, Jr.

Respondent ex-husband appeals from the trial court's disposition of his application to modify the provisions of the parties' dissolution decree. **AFFIRMED IN PART; REVERSED IN PART.**

Robert J. Kromminga, Des Moines, Iowa, for respondent-appellant.

Gerald R. Coplin, Richardson, Texas, and David L. Brown of Hansen, McClintock & Riley, Des Moines, Iowa, for petitioner-appellee.

Considered by Donielson, Acting C.J., Johnson and Schlegel, JJ.

PER CURIAM

Respondent ex-husband appeals from the trial court's disposition of his application to modify the provisions of the parties' dissolution decree. He claims that his economic circumstances have so changed that his child support obligations should be reduced. He also challenges the court's actions in awarding attorney fees to petitioner ex-wife and in imposing costs on him. We reverse the award of attorney fees; otherwise, the judgment is affirmed.

The marriage of Donald and Joyce Onthank was dissolved by decree on October 28, 1977. Donald was ordered to pay \$250 per month for the support of their minor child, Jarod, who was two years old at that time. In 1978, the court granted the parties' joint application to reduce Donald's monthly support obligation to \$200 (because of his medical problems which made him unable to retain his job) until August 1, 1979, at which point it went back up to \$250. On May 21, 1981, Donald filed this application to modify his child support obligation, alleging that his reduced income, along with Joyce's increased financial resources (she remarried as did he), justified a reduction in his obligation. He also requested specific visitation rights since Joyce now lives in Texas with her new husband.

The trial court, in its decree of November 25, 1981, found that Donald was capable of earning at least \$25,000 per year from his new business involving energy management systems. This finding was based on Donald's own projections and his earnings at his former job of working with and selling heavy equipment. The court also found that Donald was behind in his support payments by \$2,100 and that he had not paid for all of Jarod's clothing and medical expenses as ordered in the 1977 decree. Donald's support obligation was reduced to \$200 per month, but he was also ordered to pay an additional \$50 per month to pay off his support arrearages. He was granted more specific visitation rights and was ordered to pay costs and \$700 towards Joyce's attorney fees. He then brought this appeal.

I. Economic provisions of a dissolution decree may be modified only upon a showing of a substantial change in circumstances since the entry of the original

decree. Iowa Code § 598.21(8). "Any change in child support because of alleged change in circumstances shall take into consideration each parent's earning capacity, economic circumstances and cost of living." Id. Donald claims his child support obligation should be reduced because of his precarious financial position.

Although the trial court modified the terms of the support obligation, the end result is the same as before—Donald must pay a total of \$250 per month. Nevertheless, we agree with the trial court's decision on this issue. Although Donald's new energy management business is still in its initial stages, he stated that its prospects for success were "bright." The trial court gave credence to Donald's belief that his income from that business would be at least \$25,000; we see no reason to doubt that belief. Donald has failed to sustain his burden of proving the requisite substantial change in financial circumstances. We therefore affirm the trial court's order relating to child support. For similar reasons, we affirm the court's order requiring Donald to reimburse Joyce for Jarod's clothing and medical expenses paid by her.

II. Donald also complains about the court ordering him to pay costs and a portion of Joyce's attorney fees. The award of costs in an equity action such as this is ordinarily left to the trial court's discretion. McNamara v. McNamara, 181 N.W.2d 206, 211 (Iowa 1970). That discretion was not abused here. We agree with Donald, however, that he should not have to pay any part of Joyce's attorney fees, either at trial or on this appeal. Iowa Code chapter 598 does not provide for such an award in a modification proceeding. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1977). Each party is therefore responsible for his or her own attorney fees incurred both at trial and on this appeal.

Except for the provision ordering the payment of Joyce's attorney fees, the trial court's decision is affirmed in its entirety. Costs of this appeal are assessed two-thirds against Donald and one-third against Joyce.

AFFIRMED IN PART; REVERSED IN PART.