FILED
APR 28 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF

IN RE THE MARRIAGE OF GENE RUSSELL HARDY and JEAN ANN HARDY

Upon the Petition of	)	
GENE RUSSELL HARDY,	)	Filed April 28, 1978
Appellee,	)	
And Concerning	)	479
JEAN ANN HARDY,	)	2-60752
Appellant.	)	

Appeal from Dallas District Court - M. C. Herrick, Judge.

Respondent appeals from order declaring payments due her under marriage dissolution decree to be alimony and terminable upon her remarriage. Affirmed as modified.

Gregory A. Hulse, of Van Werden & Hulse, of Adel, for appellant.

John O. Reich, of Frush, Reich & Norman, of Adel, for appellee.

Heard by Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

CARTER, J.

Respondent, Jean Ann Hardy, appeals from trial court ruling and judgment declaring payments due her under marriage dissolution decree to be alimony and therefore terminable upon her remarriage.

We conclude that the issues presented on this appeal are governed by the principles established in In re Marriage of Woodward, 229 N.W.2d 274, 280 (Iowa 1975). It was there held that the remarriage of a person entitled to alimony under a prior dissolution decree does not itself terminate the right to receive such payments, but said fact "does make out a prima facie case which requires the court to end it, in the absence of proof of some extraordinary circumstances justifying its continuance." The court in Woodward clearly indicated that this rule applied to payments intended as "wife support" and does not apply to property settlements or child support.

I. Respondent, who remarried on July 25, 1975, seeks to avoid termination of the monthly payments of $250 granted her under the May 30, 1972 decree dissolving her prior marriage to petitioner Gene Russell Hardy on the ground that such payments were not intended as wife support. The monthly payments in question were labelled as "alimony" in the stipulation of the parties which formed the basis for the May 30, 1972 dissolution decree. It is observed in Woodward that "simply because the term alimony is employed in a decree does not always indicate it is used in the [wife support] sense." We conclude, however, that the trial court correctly determined that the payments involved in the present controversy have sufficient characteristics of wife support to render them terminable on remarriage under the principles announced in Woodward.

The circumstances surrounding the parties when the stipulation and decree were executed on May 30, 1972, are consistent with this conclusion. At that time, respondent had a low-paying job in a shoe store. Three of the parties' children lived with her. It appears unlikely that her wages plus the child support provided in the decree were sufficient to enable her to meet her expenses as well as the payments required to retain the home for her and the children. The stipulation and decree provided that the $250 monthly payments would cease on June 1, 1984. This was the date when, under the property settlement portions of the stipulation and decree, the contract on the home awarded respondent would be substantially paid off and petitioner would be entitled to

force sale of the home and division of the proceeds. Such circumstances indicate that respondent's need for periodic support payments beyond this time would be substantially decreased. Conversely, termination of the payments upon such occurrence is consistent with the conclusion that they were intended to provide necessary wife support until such time.

In arriving at this result we must necessarily reject respondent's contention that periodic monthly payments terminable at a specified date should, in all instances, be treated the same as an award in gross and not be subject to modification. While interpretation of the facts of a particular case might support such a result, this is not a reasonable characterization of the payments involved in the present controversy. The trial court did not err in characterizing the payments as wife support.

II. After characterizing the payments as "wife support", the trial court found that there was no evidence of any extraordinary circumstances to overcome the prima facie case for termination existing under **Woodward**. While respondent does not deny that the existing record shows no extraordinary circumstances she urges that the trial court should have established a bifurcated procedure whereby such evidence could be offered by respondent after the ruling of the court on whether the monthly payments would be considered as wife support. We find no basis in the record for concluding that respondent was misled into believing that all issues were not being tried to conclusion at the May 13, 1977 hearing. Clearly, the document filed by petitioner which precipitated that hearing, although denominated as a motion, was an application to the court seeking to invoke relief under the **Woodward** decision. Paragraph 5 of that application clearly raises the issue of lack of extraordinary circumstances justifying continuance of the payments under the **Woodward** holding. The prayer for relief of the application asked that the payments be terminated.

Nor do we agree with respondent's contention that remarks made by the trial court at the hearing were indicative that all issues raised by petitioner's application were not being tried to final conclusion. The trial court clearly stated that it was treating the application as a motion to terminate alimony payments. Respondent, on the basis of the pleadings and the statements of the court was obligated to present evidence of facts constituting extraordinary circumstances if she intended to rely upon such facts in defending against petitioner's prayer for relief.

III. Lastly, we consider the extent to which these monthly support payments may be modified retroactively. The trial court's order purports to terminate the obligation as of the date of respondent's remarriage. Review of the basic principles involved in such matters appears appropriate in passing upon the propriety of that determination.

It is ordinarily stated that the power to modify support payments retroactively is limited to the date of the filing of the application requesting relief. Pucci v. Pucci, 259 Iowa 427, 143 N.W.2d 353 (1966). But, authority to reach back to the filing date, in adjudicating such rights is not present with respect to orders terminating or decreasing periodic payments of support. This is the holding of Siver v. Shebetka, 245 Iowa 965, 968-69, 65 N.W.2d 173, 175 (1954). In the Woodward case, application of the Siver rule limited termination of the support obligation to the time of issuance of the procedendo from the appellate court because there the trial court had declined to sooner terminate the support payments and that order was never stayed pending appeal. In the present case, the trial court did terminate the accruing support payments and that order was not stayed pending appeal. We therefore conclude in the present case that proper application of the Siver rule dictates that the obligation to make the $250 monthly alimony payments be adjudged terminated as of the last monthly payment owed by petitioner prior to May 24, 1977, the date of the trial court's order.

We accordingly modify the trial court's order to provide that petitioner's alimony obligation terminate at the time indicated in the previous paragraph rather than upon respondent's remarriage. As so modified the trial court's judgment is affirmed.

AFFIRMED AS MODIFIED.