

IN THE COURT OF APPEALS OF IOWA

No. 5-465 94-980

IN RE THE MARRIAGE OF GINNY R.
BLEEKER AND LERAY E. BLEEKER

Upon the Petition of

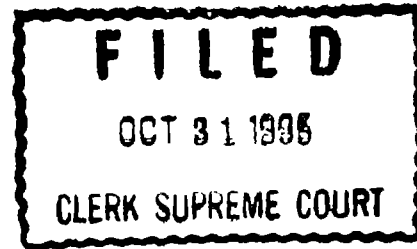
GINNY R. BLEEKER.

Petitioner-Appellee.

And Concerning

LERAY E. BLEEKER.

Respondent-Appellant.



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

LeRay Bleeker appeals from the denial of his application to modify the
alimony and child support provisions of his dissolution decree. **AFFIRMED AS
MODIFIED.**

Mark J. Smith and Kyle D. Williamson of Wells, McNally & Bowman,
Davenport, for appellant.

Dennis D. Jasper, Bettendorf, for appellee.

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

SACKETT, J.

Respondent-appellant LeRay Bleeker appeals the trial court's denial of his application to modify the child support and alimony obligations of his dissolution decree. We affirm as modified.

LeRay and petitioner-appellee Ginny R. Richardson were divorced in February 1992 after a twenty-two year marriage that produced six children. Ginny was granted physical care of the four children who were still minors. LeRay was ordered to pay rehabilitative alimony of \$1000 per month for sixty months. For child support purposes, LeRay's net monthly income was fixed at \$2166. LeRay was then ordered to pay child support of \$57 per week per child for the four minor children and \$100 per month to the two children in college.

The parties accumulated considerable property through their joint efforts, which was divided between them. Ginny was given the family residence, which she sold. Ginny and LeRay were both given an interest in investment property in California, and it was directed to be sold. LeRay was directed to make payments on the property until it was sold. Additionally, LeRay was given other property in California.

In October 1992, LeRay filed an application to modify seeking a reduction in the child support and alimony. In June 1993, this application was denied.

In September 1993, LeRay lost his job because of a reduction in work force by his employer. In November 1993, LeRay filed a second petition for modification,

again seeking a reduction in his child support and alimony obligations. On May 17, 1994, the trial court denied his application except to the \$100 per month he was to pay to the children in college. This provision of the decree was eliminated. This appeal follows.

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. *Mears v. Mears*, 213 N.W.2d 511, 514-15 (Iowa 1973). "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 Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa App. 1987).

The principles enumerated in *In re Marriage of Vetterneck*, 334 N.W.2d 761 (Iowa 1983) and applied in *Kern* are applicable here as well:

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 in the contemplation of the trial court when the original decree was entered.

Vetterneck, 334 N.W.2d at 762.

On appeal, LeRay contends the fact he has lost his job, is unable to obtain another job, and has substantial monthly obligations on the California property which

has not been sold, coupled with Ginny's increase in income, support a reduction in his obligations.

Ginny responds LeRay has not been credible, has not sold the California assets,¹ has a boat,² has a retirement account he can liquidate,³ and he can borrow on his life insurance.⁴ Ginny also points out the trial court found the letter from LeRay's employer did not say he actually lost his job but, rather, he lost his good job, and the trial court questioned his credibility on the issue of his inability to obtain employment.

At one time, LeRay had an annual income of \$60,000. The trial court in the dissolution decree found LeRay had the ability to make that much money.

It is undisputed LeRay lost his \$60,000-per-year job. He was a furniture salesperson. The record shows he has made an effort to obtain other employment. We agree with the trial court LeRay can find other employment. Our review of the

¹ In the dissolution decree, the court found the parties owned Los Angeles investment real estate valued in the \$225,000 to \$250,000 range and it was ordered listed at that price with a floor on the sale of \$200,000. There was a mortgage on the property of \$28,235 with payments of \$368 per month which LeRay was ordered to service pending the sale. At sale, LeRay was to receive the first \$62,225 and the balance was to be divided between the parties.

A piece of property in California valued by the dissolution court at \$100,000 with an incumbrance of \$75,469 was allocated to LeRay.

² In the dissolution decree, the boat was valued at \$2000.

³ In the dissolution decree, the retirement account was valued at \$12,944.

⁴ In the dissolution decree, LeRay's insurance policies were valued at \$3860 and \$1955 respectively.

record does not convince us another \$60,000-per-year job is available to him. LeRay should be able to earn a monthly wage of \$2500 before taxes and deductions and \$1800 per month after taxes and deductions. Ginny has seen a very minimal increase in her income. At the time of the dissolution, Ginny made \$330 per month from piano lessons and babysitting. At the time of the modification, Ginny made \$600 per month from piano lessons.

We agree with LeRay his obligations should be decreased, and we modify to decrease his alimony obligation to \$500 per month. Three children are still entitled to child support. We modify to provide LeRay pay child support in the amount of \$707.40 as long as three children qualify, the sum of \$594 per month as long as two children qualify, and the sum of \$435.60 per month as long as one child qualifies.

We award no attorney fees on appeal. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.