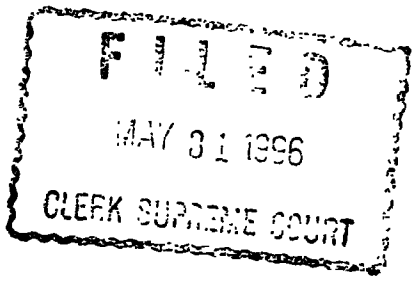
IN THE COURT OF APPEALS OF IOWA

No. 5-704/94-1767



IN RE THE MARRIAGE OF ROSEMARY JONES AND MARK W. JONES

Upon the Petition of
ROSEMARY JONES, n/k/a, ROSEMARY SHAW,

Appellee,

And Concerning
MARK W. JONES,

Appellant.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

Mark Jones appeals the district court's denial of his petition for modification of the parties' dissolution of marriage decree. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant.

Brett A. Nelson of Winstein, Kavensky & Wallace, Rock Island, Illinois, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

PER CURIAM

This is an appeal by a husband claiming his alimony obligation should be terminated. The district court denied his application for modification of the parties' dissolution decree. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

A dissolution decree, based on the parties' stipulation, was entered for Rosemary and Mark Jones on March 13, 1993. Rosemary was awarded the marital residence in Davenport, and was made responsible for the contract payments on the house. Mark was ordered to pay alimony of $150 per week for a period of two years.

The house was on the Mississippi River and it flooded during the summer of 1993. Rosemary did not make payments on the house after the flood, and the contract was forfeited. On January 20, 1994, Mark filed an application for modification of the decree. He claimed he had agreed to pay alimony in order to allow Rosemary to maintain the contract on the house. He stated that since the contract had been forfeited, his alimony obligation should cease.

A default was entered against Rosemary on February 28, 1994. This default was later set aside. After a hearing, the district court determined Mark had failed to show a substantial change in circumstances, and denied his application for modification. Both parties filed motions pursuant to Iowa Rule of Civil Procedure 179(b), and these were denied by the court. Mark appealed.

I. Mark contends the district court should have terminated his alimony obligation. A party who seeks a modification of a dissolution decree must establish by a preponderance of the evidence that there has been a substantial change in circumstances since the entry of the decree or its last modification. *In re Marriage of Jacobo,* 526 N.W.2d 859, 864 (Iowa 1995).

We agree with the district court's decision denying Mark's application for modification. We find Mark failed to show the alimony award was based on Rosemary's contract obligations for the house. Mark admitted he had sought to include a provision in the parties' stipulation linking the payment of alimony to the contract payments on the house, but had been unsuccessful.

II. Mark claims the district court abused its discretion in granting Rosemary's application to set aside the default because she failed to make a good faith showing of a defense in the application. Mark did not file a resistance to the application to set aside the default. In addition, the modification hearing showed Rosemary did have a good faith defense to the action. We find no abuse of discretion.

III. Mark claims the district court should not have granted Rosemary's rule 179(b) motion because it was untimely. A review of the district court's ruling shows both parties' rule 179(b) motions were denied.

IV. Rosemary asks for attorney fees for this appeal. 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 Mark should pay $500 for Rosemary's attorney fees for this appeal.

We affirm the district court on all issues raised in this appeal. Costs of this appeal are assessed to Mark.

AFFIRMED.