

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 31 1986

CLERK SUPREME COURT

IN RE THE MARRIAGE OF DALE ROY FRENCH AND LINDA LOU FRENCH

Upon the Petition of	)	75
DALE ROY FRENCH,	)	Filed March 31, 1986
Petitioner/Appellant-	)	
Cross-Appellee,	)	
And Concerning	)	5-666
LINDA LOU FRENCH,	)	85-729
Respondent/Appellee-	)	
Cross-Appellant.	)	

Appeal from the Iowa District Court for Dubuque County (2886 DM) T.
H. Nelson, Judge.

Petitioner appeals a modification order that increased the amount of
alimony he must pay to respondent. **AFFIRMED.**

Robert Sudmeier of Fuerste, Carew, Coyle, Jergens & Sudmeier, Dubuque,
Iowa, for petitioner-appellant.

Joseph Zwack of Zwack, Blum & Neuwoehner, Dubuque, Iowa, for
respondent-appellee.

Considered by Donielson, P.J., Snell, and Schlegel, JJ.

Petitioner Dale French appeals a modification order that increased the amount of alimony he must pay to respondent. We affirm the trial court.

The original divorce decree in 1979 awarded respondent, Linda French, custody of their two children. Dale was ordered to pay \$60 per week per child in child support, all mortgage, tax, and insurance payments on the house, and one-half of all capital improvements. He retained one-half interest in the house. In addition to these and other financial obligations, Dale was ordered to pay \$10 per year alimony to Linda.

At the time of the decree, the court noted that Linda was almost 38 years old, that she worked full-time for \$3.10 per hour as a night cook, that her formal education ended at the tenth grade, and that she "takes medication for epilepsy, and also experiences an infected kidney problem that also periodically requires medication." The trial court also found that at the time of the dissolution Dale was earning approximately \$23,400 annually.

In July 1984, Linda filed a petition for modification of the original decree. She alleged there had occurred material and substantial changes since the decree in that there had been a substantial increase in Dale's income, a substantial deterioration in her health, and a substantial decline in her income. She also asked to modify the decree so as to require the consent of both parties for capital improvements.

In addition to the money being received from Dale each month, Linda's income is now comprised of \$305 per month from A.D.C. and \$66 per month in food stamps. At the hearing, Linda testified that she no longer can find regular employment because of her epileptic condition. Although her epileptic condition was known and considered at the dissolution proceedings, Linda stated at the

hearing that her condition has worsened since then and her need for medication has doubled.

The record shows that by the time of the modification hearing, Dale's income had substantially increased. Dale was earning approximately \$39,000 in 1984. He had remarried and his income, combined with his wife's, amounted to approximately \$75,000 in 1984. Although his wife was no longer employed at the job she held in 1984, the evidence showed that she had set up her own business since that time.

The trial court modified the decree increasing the alimony award from \$10 per year to \$600 per month, decreased the child support payable to \$25 per week and declined to modify the provision relating to capital improvements to the residence.

On appeal, Dale alleges that the trial court erred in increasing the amount of alimony because there was insufficient evidence to support the decision generally, and in particular, there was absent any medical expert testimony relating to Linda's change in medical condition. Consequently, he claims there was insufficient evidence concerning the effect her present condition had on her economic circumstances, or that the condition would continue into the foreseeable future. Linda appeals the trial court's refusal to alter the decree as it relates to the capital home improvements and requests attorney fees.

Our review of this equity action is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). While a substantial change in a party's financial circumstances may be a sufficient basis for modification of support provisions, it is not the sole change of circumstances that will justify modification. Iowa Code § 598.21(8); In re Marriage of Mayer, 347 N.W.2d 681, 682-83 (Iowa App. 1984).

Such changed conditions must be such as were not within the knowledge or contemplation of the court when the former decree was entered, and a modification should be based upon a change of circumstances more or less permanent or continuous, not temporary. Id. at 83.

I. Sufficiency of the Evidence. Dale argues extensively about the lack of any medical testimony contained in the record that demonstrates a change in Linda's medical condition, its alleged permanency, and its consequences on her economic status. He maintains that this should have been required before the trial court could modify the alimony provision of the decree. He has not, however, brought to our attention any case or statute requiring the same degree of proof he argues for in an alimony modification matter. He relies partly on Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, ___, 101 N.W.2d 167, 171 (1960), to support his position. This case can readily be distinguished not only on its facts but its holding. Bradshaw involved a question of fact in a worker's compensation case as to the causal connection between plaintiff's fall in the hospital and his condition at the time of an operation. There the supreme court said this knowledge "... is not within the knowledge and experience of ordinary laymen. It is a question with respect to which only a medical expert can express an intelligent opinion. In other words, the causal connection between the fall and subsequent disability is essentially within the domain of expert testimony." Id. at 171. In this case, there is no question as to the causal connection between Linda's medical malady and her disability. It has been established that epilepsy is the cause of her inability to work. The essential question addressed in this case is whether Linda's disability has increased because of more severe epileptic seizures. Or, in other words, whether her epilepsy is out of control at this point so as to preclude her from securing satisfactory employment both now and in the future. Medical expert evidence is not required to decide this issue. In

Daniels v. Bloomquist, 258 Iowa 301, ___, 138 N.W.2d 868, 873 (1965), a case cited by Dale for his position, the supreme court said: "[D]irect expert evidence is not, according to the general rule, always essential to establish the permanency or future effects of an injury. So, future pain and suffering, or the permanency of injuries, may in some cases be inferred from the nature of the injury alone." Kaltenheuser v. Sesker, 255 Iowa 110, 117, 121 N.W.2d 672, 677, citing 25 C.J.S. Damages § 162.

The only evidence regarding Linda's epileptic condition at the dissolution proceeding was her own lay testimony. Based upon that evidence, the dissolution court awarded her \$10 a year alimony. It is apparent that the trial court wanted to keep the question of alimony open for future modification and still encourage Linda to remain self-supporting. See In re Marriage of Gaumer, 303 N.W.2d 136, 140 (Iowa 1981). At the modification hearing, Linda also relied heavily on her own testimony. However, she also had corroborating testimony by her daughter, as well as evidence of extensive medical bills concerning her changed condition. Finally, at the modification hearing, the trial court noted that it assumed the original decree was based upon the belief that Linda had her epileptic problem under control.

Based upon this evidence, the trial court concluded Linda had carried her burden of proof that her condition had changed, and increased the alimony from \$10 a year to \$600 per month. A modification of alimony, even if based solely upon a party's testimony, will be supported. See Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974). We give weight to the trial court's findings in this de novo review, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Mayer, 347 N.W.2d at 683.

We also note the record shows that Dale's income has substantially increased, and in turn, Linda's income has substantially decreased. In addition,

we may take into consideration the added income from Dale's wife when determining Dale's overall financial condition. Mayer, at 682.

Based upon the record before us, we hold the trial court did not err in increasing the amount of alimony. There is sufficient evidence to conclude that there has been a substantially permanent change in circumstances not contemplated by the court when the decree was originally entered in 1979.

II. Capital Improvements Provision. In its modification order, the trial court refused to alter the provision of the original decree that required mutual consent by each party for any capital improvement of Linda's residence. On appeal, Linda argues that this was error because this provision has proven unworkable. We note, however, that the trial court found no material change in the physical condition of the residence. Moreover, the record amply demonstrates that Linda has often confused maintenance of the residence with capital improvements. It is also noteworthy that the original decree holds Linda responsible for the ordinary maintenance of the house. Therefore, we hold the trial court did not err when it refused to modify this provision of the decree.

III. Attorney's Fees. Respondent has requested attorney fees not only for the trial below but also for this appeal. We award a total of \$5,000 for fees associated with both trial and appellate work.

Because we have found no error on the part of the trial court in modifying the decree, we affirm its decision.

AFFIRMED.