IN THE COURT OF APPEALS OF IOWA

JUN 26 1997
000407

No. 7-240 / 96-1249

IN RE THE MARRIAGE OF CRAIG C. REPP and DONNA MARIE REPP

Upon the Petition of
CRAIG C. REPP,
Appellant,

And Concerning
DONNA MARIE REPP,
Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Petitioner appeals the district court's denial of his request to modify the child support provisions of a dissolution decree. **AFFIRMED.**

Michael C. Dunbar of Dunbar & Dunbar, Waterloo, for appellant.

David H. Correll of Correll & Sheerer, Cedar Falls, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P. J.

I. Background Facts and Proceedings.

Craig and Donna Repp were married in October 1980. They have one child, Jason, born October 13, 1981. For most of their marriage, Craig worked in managerial positions for the University Book Store in Cedar Falls. In March 1990, Craig filed a petition for dissolution. In May 1990, Craig's employment at the book store was terminated.

At the time of trial in February 1991, Craig worked as a manager for Goodwill Industries, earning a monthly net income of $1292. Donna's monthly net income was $400. Shortly before the entry of the decree, Craig informed the court that he intended to leave Goodwill and open a book store in Cedar Falls. The court found this employment decision was a voluntary reduction of income. Craig was ordered to pay $100 per week in child support and $400 per month in rehabilitative alimony for four years based on his income from Goodwill Industries.

Craig's business failed in July 1994. Thereafter, Craig worked in Las Vegas as a bingo agent earning $6.50 per hour. At the time of the modification trial, Craig worked at a casino in Dubuque earning $7.00 per hour.

On December 20, 1995, Craig petitioned for modification of the decree. He testified in these proceedings that he tried to find higher-paying employment, but was

unsuccessful. Donna testified she was employed at a greenhouse earning $6.50 per hour. The district court refused to modify the decree.

Craig appeals. He argues the modification court should have considered his actual earnings of $7.00 per hour rather than his earning capacity in determining the merits of his modification request.

II. Modification of Child Support.

Our review of the trial court's decision on the modification petition is de novo. *In re Marriage of Lee,* 486 N.W.2d 302, 304 (Iowa 1992). To prevail on his modification petition, Craig had to prove by a preponderance of the evidence that a material and substantial change in circumstances has occurred since the date of the original decree that was not within the contemplation of the dissolution court. *In re Marriage of Feustel,* 467 N.W.2d 261, 263 (Iowa 1991). We may not modify the decree simply because it was inequitable when entered; an appeal is the proper vehicle with which to achieve that remedy. *In re Marriage of Chmelicek,* 480 N.W.2d 571, 574 (Iowa App. 1991). The amount set as child support is not a variable sum to be adjusted with each fluctuating change in the circumstances of the parties. *In re Marriage of Mueller,* 400 N.W.2d 86, 88 (Iowa App. 1986). Rather, any change in circumstances must be more or less permanent or continuous, not temporary. *In re Marriage of Mayer,* 347 N.W.2d 681, 683 (Iowa App. 1984).

Craig has failed to prove any change in his income is permanent or continuous. His own testimony indicates a "good possibility" he could find entry level work at a bookstore and earn $22,500 per year. His estimated earnings are compatible with the dissolution court's findings regarding his earning capacity in 1991. Because Craig has not demonstrated a permanent or continuous substantial change in circumstances that was not within the contemplation of the dissolution court, we affirm.

Donna requests that Craig contribute $750 toward her attorney fees incurred defending this appeal. We have discretion to award reasonable and fair attorney fees based on the abilities of the parties to pay. *In re Marriage of Guyer,* 522 N.W.2d 818, 822 (Iowa 1994). We also consider the needs of the party requesting fees and whether that party was obligated to defend the district court's decision on appeal. *In re Marriage of Krone,* 530 N.W.2d 468, 472 (Iowa App. 1995). Donna prevailed on appeal, has limited income, and has lived without approximately $10,000 of child support due to her under the dissolution decree. We order Craig to pay $750 toward Donna's appellate attorney fees.

AFFIRMED.