FILED
MAR 31 1980
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RAYMOND HITCHCOCK AND SHARON HITCHCOCK

Upon the Petition of)
RAYMOND HITCHCOCK,) Filed March 31, 1980
Petitioner-Appellant,)
And Concerning) 0-33
SHARON HITCHCOCK,) 62300
Respondent-Appellee.)

Appeal from Madison District Court - Dale S. Missildine, Judge.

Petitioner appeals and respondent cross-appeals modification of economic provisions of parties' dissolution decree. Reversed and Remanded.

Stephen A. Hall of Hall, Ewalt & Hall, Indianola, for petitioner-appellant.

R. J. Wagener of Wagener & Day, Ankeny, for respondent-appellee.

Considered by Oxberger, C.J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Petitioner, Raymond Hitchcock, appeals and respondent, Sharon Hitchcock, cross-appeals modification of economic provisions of parties' dissolution decree. Raymond asserts Sharon failed to prove a substantial and material change of circumstances since the decree was entered. Sharon requests award of attorney's fees for this appeal. We reverse the trial court's judgment and remand for reinstatement of original decree's economic provisions.

Our scope of review in this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine from credible evidence rights anew on those propositions properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While weight is given to the trial court's findings, we do not abdicate our function as trier de novo on appeal. Id; In re Marriage of Locke, 246 N.W.2d 246, 249 (Iowa 1976).

I.

The parties' dissolution decree was filed on December 18, 1972. Incorporating the parties' stipulation, the decree awarded Sharon alimony of $100 per month and child support of $50 per month for each of their four children, which would continue respectively until they each reached majority. On April 13, 1978, Sharon filed an application to modify the decree. The trial court modified the decree to provide for an increase in alimony to $150 per month until completion of her training as a legal secretary and an increase in child support to $75 per month for the one remaining minor child.

Raymond is a farmer and had an adjusted gross income of $7594 in 1972 and $6909.68 in 1977, the last year prior to trial. Since the decree, Sharon has held various jobs, mostly clerical. One job involved office work where Sharon was able to sit at a desk. She testified a back problem, which existed at the time the decree was entered, now prevents her from taking any job that would require her to be on her feet. At the time of trial, Sharon was enrolled in a legal secretary training program. She testified she entered the program to be able to obtain a job that would not require her to be on her feet. The trial court found as a substantial and material change of circumstances

the impact of inflation of Sharon's cost of living and her back problem, which the court regarded as necessitating obtaining employment allowing her to sit at a desk.

II.

The party seeking modification has the burden to prove a substantial change in circumstances from the time the decree was entered, making it equitable and just that different terms be fixed. Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978). A decree should not be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed conditions. Id. Further, the changed circumstances must not have been within the contemplation of the trial court when it handed down the original decree. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974). We hold neither the increased cost of living nor Sharon's back problem to be substantial or material changes in circumstances warranting modification.

The impact of inflation on the dollar's purchasing power may be considered in a modification proceeding, but diminished purchasing power cuts both ways. Mears v. Mears, 213 N.W.2d 511, 513 (Iowa 1973); see Page, 219 N.W.2d at 558. Both Raymond and Sharon experienced a loss in their respective purchasing power. Unless an impact differential is shown, this factor is not sufficient by itself to justify modification. See Page, 219 N.W.2d at 558; Spaulding v. Spaulding, 204 N.W.2d 634.

Sharon's back problem was known at the time of the decree, but apparently it has increased in severity and its debilitative effect on her. However, this showing is insufficient by itself to justify modification. Sharon failed to show her back problem prevents her from obtaining satisfactory employment. While the back problem may prevent her from working in a position requiring her to be on her feet, it does not prevent her from working at a job not requiring standing. The job as legal secretary, for which she is training, would be just such a job. But, Sharon has not shown she is currently unable to find suitable employment. In fact, she worked for the State in a position that did not require her to be on her feet. Unfortunately, she was dismissed from this position because she did other people's work.

This is not a case then where a person has increasing difficulty in obtaining and keeping employment, which would warrant modification. See Page, 219 N.W.2d at 557-

58. Sharon's efforts in acquiring new skills to enhance her employment prospects are commendable. But, she has not shown why Raymond should fund her educational endeavors. At the time of the decree, Sharon did not even have a high school degree. It is reasonable to assume the parties and the trial court contemplated Sharon's lack of employable skills, yet no provision was made for providing her with any job training. Thus, Sharon failed to prove a substantial material change of circumstances, not within the trial court's contemplation, justifying modification of the decree. See Page, 219 N.W.2d at 557.

This same analysis is applicable to the modification of the child support award. In re Marriage of Jensen, 251 N.W.2d 252, 253-54 (Iowa 1977). Sharon established no substantial change in circumstances warranting modification of the support award. See In re Marriage of Glass, 213 N.W.2d 668, 671 (Iowa 1973). The decree provided for support of $50 per month per child. There was not, as Sharon claims, any attempt to award a total of $300 per month for support. The decree provided only for $100 per month for alimony and $50 per month per child for support. The support ends as each child reaches majority, a foreseeable event within the trial court's contemplation. While Sharon's educational efforts temporarily limit her ability to earn money, this too was a foreseeable event, which was not provided for in the decree.

We hold Sharon has failed to establish substantial and material changes in circumstances, not within the original trial court's contemplation, justifying this modification. Accordingly, we reverse the trial court's order and remand for reinstatement of the provisions of the original decree.

REVERSED AND REMANDED.

Oxberger, C.J. dissents.

OXBERGER, C.J. *(dissenting)*

Sharon has had back pain since high school. However, only recently has it affected her employability. The original decree did not anticipate she would need to change careers due to her back impairment.

I would affirm the trial court's judgment.