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IN THE COURT OF APPEALS OF IOWA

ROBERT KRETZSCHMAR,)

Defendant-Appellant,)

Filed March 31, 1980

vs.)

JEAN KRETZSCHMAR,)

Plaintiff-Appellee.)

0-74
2-63951

Appeal from Johnson District Court - Robert Osmundson, Judge.

Defendant appeals order modifying alimony provision of parties' divorce decree.

Reversed and Remanded.

Donald L. Diehl of Diehl & Washburn, Iowa City, for defendant-appellant.

Marion R. Neely, Iowa City, for plaintiff-appellee.

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

DONIELSON, J.

Defendant, Robert Kretzschmar, appeals order modifying alimony provision of parties' divorce decree. For reversal, Robert asserts his increased income was within contemplation of trial court at time of divorce and increased costs of living due to inflation do not constitute a sufficient change of circumstances to justify increasing his alimony payments. We reverse the trial court's order and remand this case for reinstitution of the alimony provisions of the original divorce decree.

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).

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).

I.

The parties were married in 1948 and divorced in 1970. The decree, incorporating a stipulation of the parties, provided Jean with alimony of \$500 per month, which would be increased to \$600 per month following termination of child support payments. On January 2, 1979, Jean applied for modification of the decree, alleging as the change in circumstances the increase in Robert's salary and the increased cost of living. The trial court found these reasons to be sufficient and modified the decree to provide for alimony of \$750 per month.

Robert is a doctor. His income in 1970 was \$32,795 and it increased gradually to \$58,244 in 1978. He accepted a new position to begin on July 1, 1979, at an annual salary of \$74,000. Robert has remarried and in 1978 his current wife had an income of about

\$9,000. The likelihood of gradual salary increases was discussed by the parties during their extensive negotiations leading to their stipulation. Jean attempted unsuccessfully to incorporate in the stipulation a provision increasing her alimony as Robert's income increased. In the order of modification the trial court held the occurrence of such negotiations did not mean the possibility of salary increases was within the original trial court's contemplation when it approved the stipulation.

Initially, it should be noted the binding force of a stipulation regarding alimony depends on the approval of the trial court. Brin v. Brin, 240 Iowa 659, 664, 37 N.W.2d 261, 264 (1949). The stipulation becomes merged in the decree. Id. Thus, there is no question regarding the trial court's power to modify the agreed upon terms. Id. at 664-65, 37 N.W.2d at 264; see Kuyper v. Kuyper, 244 Iowa 1, 4-5, 55 N.W.2d 485, 487 (1952); Nicolls v. Nicolls, 211 Iowa 1193, 1200-01, 235 N.W. 288, 291 (1931).

II.

The trial court in its modification order held matters discussed in arriving at a stipulation regarding alimony are not within the contemplation of the decree-issuing court. Thus, the parties' negotiations regarding Robert's subsequent salary increases were ignored. While there is no Iowa law directly on point, one case has discussed and examined the circumstances surrounding a stipulation negotiation. See Hobson v. Hobson, 248 N.W.2d 137, 140-41 (Iowa 1976). We find, however, resolution of this issue would not be dispositive.

The original trial court, knowing Robert to be a doctor teaching at the University of Iowa, can reasonably be presumed to have contemplated Robert receiving regular annual salary increases, which is what occurred until 1979. Further, the court could have contemplated Robert might be promoted to another position or enter private practice, where in either case Robert's income would increase. Although a close question, we find Robert's salary at his new position to have been within the reasonable contemplation of the trial court. Even if the increase was not in the trial court's contemplation, this would not be the end of our inquiry.

Although the impact of inflation on the dollar's purchasing power may be considered, this diminished purchasing power works both ways. Mears v. Mears, 213

N.W.2d 511, 513 (Iowa 1973); see Page, 219 N.W.2d at 558. Both Robert and Jean experienced a loss in their respective purchasing power. 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, 636 (Iowa 1973). We do not believe alimony payments should be indexed to the rate of inflation by modification of the divorce or dissolution decree.

Ultimately, we must conclude enforcement of the original decree will not be attended by positive wrong or injustice as a result of the changed conditions asserted here. See Ellis, 262 N.W.2d at 268; Full, 255 N.W.2d at 159; Metzger v. Metzger, 224 Iowa 546, 551-52, 278 N.W. 187, 189 (1938). We find it significant Jean failed to establish her need for an increase in alimony. See In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1974); In re Marriage of Tucker, 213 N.W.2d 498, 501 (Iowa 1973); In re Marriage of Cook, 205 N.W.2d 682, 684 (Iowa 1973); In re Marriage of Campbell, 204 N.W.2d 638, 639 (Iowa 1973); Hart v. Hart, 239 Iowa 142, 146-48, 30 N.W.2d 748, 750-51 (1948). The law of Iowa does not require a person to share every economic gain with his or her former spouse, without some showing of need or unfairness. Absent a showing Jean's needs are not being met with her current resources, an increase in Robert's income does not warrant an increased alimony award. See Beeh, 214 N.W.2d at 175. This is particularly true when the parties and the court are aware of the possibility of such an occurrence.

Here, the parties have been apart for ten years. From her salary and alimony, Jean has a net income of about \$950 per month. Their daughter, Jane Kreitzschmar, who is living at home, receives at least \$300 per month for her college expenses from Robert. When Jane either receives her undergraduate degree, marries, or attains age twenty-six, Robert's support payments to her will stop, but his monthly alimony payments to Jean will increase to \$600.

Under the circumstances, we hold Jean has failed to establish changed circumstances, not within the contemplation of the original trial court, that would justify modification of the alimony provisions of parties' divorce decree. We reverse the trial court's order and remand for reinstatement of the original provisions.

REVERSED AND REMANDED.

Oxberger, C.J. and Snell, J. dissent.

OXBERGER, C.J. (dissenting)

The majority states inflation works both ways. However, they only apply relief one way. Robert's employer gave him pay increases to aid him in combating inflation's effect on his ability to provide for his family. Failure by the majority to give Jean relief results in a windfall to Robert.

At the time of the original decree Jean could buy a gallon of milk for one dollar; now she must pay two dollars. At the time of the original decree Robert was earning \$32,795 a year. He now earns \$75,000. I would affirm the trial court.

Snell, J., joins this dissent.