FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KATHLEEN A. ZACHAR AND JOHN J. ZACHAR, JR.

Upon the Petition of)
KATHLEEN A. ZACHAR,)
Petitioner-Appellee,) Filed May 25, 1982
And Concerning)
JOHN J. ZACHAR, JR.,) 2-121 / 2-67167
Respondent-Appellant.)

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Appeal from Linn District Court - Thomas M. Horan, Judge.

Respondent husband appeals from the trial court's refusal to modify the parties' dissolution decree, asserting there was a substantial and material change in circumstances justifying a decrease in alimony. REVERSED.

Benjamin W. Blackstock of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for respondent-appellant.

James F. Pickens of Pickens, Barnes & Abernathy, Cedar Rapids, for petitioner-appellee.

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

PER CURIAM

Respondent husband appeals from the trial court's refusal to modify the parties' dissolution decree, asserting there was a substantial and material change in circumstances justifying a decrease in alimony. We reverse.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend upon the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

The parties' marriage was dissolved by a decree in 1978 which, inter alia, awarded the petitioner wife $1200 per month in alimony and the family homestead. At the time of the dissolution, respondent was a successful realtor and the head of a real estate sales corporation that employed 36 people, but at the time of the modification hearing respondent employed only 3 part-time people. In 1978, the company's gross receipts were $1,074,059. There has been a steady decline in the company's gross receipts since the dissolution: $676,212 in 1979; $233,536 in 1980, and $70,410 for the first five months of 1981. This decline in gross receipts has had a substantial impact on respondent's gross earnings: $46,913 in 1978; $68,076 in 1979; and $11,003 in 1980. Respondent's corporation was dissolved in 1980 and he has been selling assets to pay living expenses and alimony.

The respondent asserts that in light of the above evidence, the trial court erred by refusing to reduce his alimony payments to petitioner. In a proceeding for modification of the alimony provisions of a dissolution decree, the party

seeking a modification must establish a change of circumstances by a preponderance of the evidence. In re Marriage of Full, 255 N.W.2d at 159. The changed circumstances must be those which were not within the contemplation of the trial court when the original decree was entered. Id.

Our de novo review indicates the respondent has carried his burden and we therefore reduce his alimony obligation to $800 per month. This is not to affect the $300 per month child support respondent pays for Polly or the $150 per month the respondent asserts he is contributing to his son, Ned, for school expenses. The respondent's alimony payments will automatically increase to $1000 per month when his adjusted gross income reaches $25,000 and return to the original amount of $1200 when respondent's adjusted gross income reaches $32,000. For purposes of determining adjusted gross income, respondent's income will include any salary paid to his current wife while she is employed by respondent.

REVERSED.