

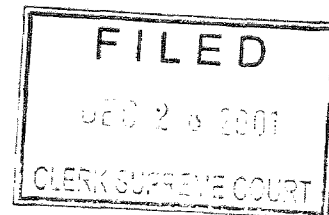
IN THE COURT OF APPEALS OF IOWA

No. 1-802 / 01-0228
Filed December 28, 2001

**IN RE THE MARRIAGE OF KATHY DUWE
AND DALE L. DUWE**

Upon the Petition of
**KATHY NILES, f/k/a
KATHY DUWE,**
Petitioner-Appellant/Cross-Appellee,

And Concerning
DALE L. DUWE,
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Clayton County, John
Bauercamper, Judge.

Petitioner appeals from the modification of her dissolution decree.

AFFIRMED.

Daniel H. Swift and John Q. Swift of Swift & Swift Attorneys, Manchester,
for appellant.

Kevin H. Clefisch of Clefisch & Saunders, Garnavillo, for appellee.

Considered by Huitink, P.J., and Zimmer, and Vaitheswaran, JJ.

ZIMMER, J.

Petitioner, Kathy Niles, appeals from the modification of her dissolution decree. She contends the trial court erred in reducing her alimony award. Respondent, Dale Duwe, cross-appeals contending the court erred in failing to eliminate his alimony obligation. Because we find the trial court's decision equitable under the circumstances, we affirm.

Kathy and Dale Duwe were married in 1977. The parties have three children. Dale worked as a welder for the railroad during the marriage. Kathy did not work. She remained at home to care for the parties' children and a son from a prior marriage. Dale quit his job with the railroad in 1982 while Kathy's petition for dissolution of marriage was pending. His earnings at the time he quit were about \$20,000 per year plus benefits. Dale did not file an answer to Kathy's petition for dissolution and did not appear for trial. As a result, the court found him in default and based its decision on evidence furnished by Kathy.

The parties' original dissolution decree was entered in 1983. The decree ordered Dale to pay child support in the amount of \$940 per month for the parties' three children. When the last child no longer qualified for support, Dale was to begin paying Kathy \$500 per month in alimony. The decree was never appealed.

In 1985, Dale filed a petition to modify seeking a reduction in his child support obligation. His application was denied. In December of 1990, Dale filed a second application to modify. Following hearing, the district court reduced his child support obligation to \$427 per month. Dale's request to reduce his alimony obligation was denied as premature.

In April of 2000, Dale filed another petition to modify. Dale's child support obligation was scheduled to terminate in June of 2000, and he sought to eliminate his alimony obligation. Following hearing, the trial court ordered Dale's spousal support obligation reduced from \$500 to \$250 per month. Kathy appeals and Dale cross-appeals.

Kathy contends the district court should have left her alimony award undisturbed. Dale contends the court erred in refusing to terminate his spousal support obligation due to a substantial change in his financial resources, Kathy's remarriage, and her failure to prove extraordinary circumstances for the continuation of spousal support.

I. Scope of Review.

We review de novo proceedings to modify the alimony provision of a dissolution decree. *In re Marriage of Sjulín*, 431 N.W.2d 773, 776 (Iowa 1988); *Wernli v. Wernli*, 216 N.W.2d 322, 323 (Iowa 1974). We give weight to the findings of the trial court but are not bound them. *Sjulín*, 431 N.W.2d at 776. Our duty is to examine the entire record and adjudicate rights anew on those questions properly presented. *Id.* The burden is on the party seeking modification of a dissolution decree to prove a substantial change in circumstances from the time the decree was entered. *Id.* The subsequent remarriage of a spouse does not result in the automatic termination of an alimony obligation; however, the burden shifts to the recipient to show that extraordinary circumstances exist which require continuation of the alimony payments. *In re Marriage of Ales*, 592 N.W. 2d 698, 702 (Iowa Ct. App. 1999).

II. The Merits.

Dale's current child support obligation terminated in June 2000 when the parties' last child reached maturity. The district court declined to eliminate Dale's alimony obligation, but concluded it should be reduced from \$500 to \$250 per month. Upon de novo review of the record, we conclude the trial court's decision was equitable under the somewhat unusual circumstances of this case.

Not surprisingly, there have been many changes in the parties' circumstances since their decree was entered in 1983. Kathy remarried in 1987. She and her current husband, Paul Niles, separated in 1991. They have never divorced. Kathy and Paul have a fourteen-year-old son who resides with his father. Kathy's current spouse is employed by a fur buyer. According to Kathy, her spouse does not contribute to her support. Kathy presented little specific information concerning the financial circumstances of her current spouse.

Kathy is disabled due to a congenital hip defect. She had surgery on her hip in 1994, however her condition is continuing to deteriorate. She cannot work and receives SSI benefits of \$512 per month. Kathy is a high school graduate. She has no additional education, vocational training, or skills.

Dale remarried in 1990. He currently works as a dealer at a riverboat casino. He earns \$7.28 per hour plus tips. He averages fifty-five to sixty-six hours per two-week pay period. In 1999, Dale's gross annual earnings were \$26,364. He testified he does not do as well today as he did in 1983, after adjusting for inflation. Dale's current spouse earns \$7.25 per hour working forty hours per week. Dale has not paid all of the child support previously ordered. He fell far behind in his child support payments during the mid-1980's because of

poor paying jobs and an apparent lack of interest in supporting or seeing his children. He has a substantial delinquency and is currently paying \$418 per month on his delinquent child support obligation under an income withholding order. At this rate his delinquency will not be repaid until the year 2008.

The district court declined to eliminate the alimony award established in the parties' 1983 dissolution decree, but determined the award should be reduced from \$500 to \$250 per month. Upon de novo review of the record, we agree with the district court. The purpose of the original alimony award is not revealed by the language of the parties' decree or the evidence presented at trial. However, Kathy's current health problems, her inability to work, and her limited income support a continuation of alimony in some amount even though she has remarried. We further find that the trial court's decision to reduce Dale's alimony obligation is supported by the evidence. Although some of Dale's financial difficulties are self-inflicted, we conclude the trial court's decision to modify is equitable in view of his overall financial situation. We also note that Kathy's health has deteriorated significantly since her remarriage. We will disturb the trial court's ruling only where there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W. 2d 252, 257 (Iowa 1996).

AFFIRMED.