IN THE COURT OF APPEALS OF IOWA

No. 6-652 / 96-187

IN RE THE MARRIAGE OF RONALD EUGENE WARNS AND DARLYS MARIE WARNS

000541

Upon the Petition of
RONALD EUGENE WARNS,

Appellee,

And Concerning
DARLYS MARIE WARNS,

Appellee.

FILED
JUN 26 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Ronald Warns appeals the district court's order modifying the dissolution decree regarding monthly alimony payments and life insurance coverage, and awarding Darlys Warns attorney fees. **AFFIRMED.**

Timothy C. Boller of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant.

Jay A. Nardini of Ball, Kirk, Holm & Nardini, P.C., Waterloo, for appellee.

Considered by Cady, P.J., Huitink, J., and Peterson, S.J.*

*Senior judge from the First Judicial District serving on this court by order of the Iowa Supreme Court.

PETERSON, S.J.

Ronald Warns appeals a district court's order denying his request to modify the dissolution decree concerning monthly alimony payments and insurance coverage and awarding Darlys Warns attorneys fees. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

The marriage of Ronald and Darlys Warns was dissolved by a Florida court on December 16, 1985. At that time, Ronald was employed as a pilot for Northwest Airlines and had a gross annual income of $82,931. Darlys was a homemaker but had a license to sell real estate in Florida. The decree required Ronald to pay $1000 per month permanent alimony beginning September 1, 1985, and continuing until Darlys remarried or upon either party's death. The alimony award would decrease by a maximum monthly amount of $100 if Darlys obtained health insurance through her employment. If Darlys's health insurance contribution was less than $100 per month, the alimony would be reduced accordingly. The court also ordered Ronald to obtain a $50,000 life insurance policy with Darlys as a beneficiary to secure the alimony obligation.

In 1989, Ronald remarried and purchased a ranch in Wyoming. In 1991, Darlys filed a modification petition to increase the alimony award. At that time, Ronald had a net monthly income of $7002 and Darlys had a net monthly income of $336.67. On January 21, 1992, the Florida court modified the decree and ordered Ronald to pay $1250 per month.

000543

In February 1994, Darlys moved to Iowa to live with and care for her mother. She also obtained part-time employment at Covenant Medical Center in October 1994. In January 1995, Ronald decreased the monthly alimony payments to $1150 because Darlys had obtained insurance through her employer.

In February 1995, Ronald applied for and received disability retirement from Northwest Airlines because degenerative arthritis prevented him from maintaining his pilot's license. He began drawing disability in March 1995.

On April 24, 1995, Ronald filed a petition for modification seeking a decrease in alimony and his life insurance obligation. In July 1995, Darlys was diagnosed with breast cancer and underwent surgery.

At the time of the modification hearing in October 1995, Ronald was fifty-six years of age. He had a gross annual income of $78,206.04. This was disability retirement income. He also received $1000 per month disability insurance which was applied upon motor vehicle loan payments. He had a net worth of approximately $224,918.74 His disability retirement income would convert to regular retirement in August 1999 and would increase to $86,400 annually. Prior to his disability, he earned $125,060 in 1994.

At the time of the modification hearing, Darlys was fifty-two years of age. She had a gross annual income of approximately $14,000 and a net worth of approximately $26,260. Darlys had obtained health and medical insurance from her employer and paid premiums of $79.75 per month. Although her living expenses had

decreased because she was living with her mother, this would not be permanent because of her mother's medical condition. In addition to the breast cancer, Darlys suffered from high blood pressure and thyroid complications, both requiring medication. The breast cancer required continued treatment for approximately five years and there was a sixty-five percent chance the cancer would not reappear.

The trial court ordered Ronald to continue paying alimony in the amount of $1150 per month and maintain the $50,000 life insurance policy. It also awarded Darlys attorneys fees of $1787.15.

Our review of this matter is de novo by Iowa Rule of Civil Procedure 4. We give weight to the findings of the trial court but we are not bound by them. Iowa R. App. P. 14(f)(7). The alimony provisions of a decree dissolving a marriage can be modified if there has been a material and substantial change in the circumstances of the parties, financially or otherwise, making it equitable that other terms be imposed. *In re Marriage of Jensen*, 251 N.W.2d 252, 254 (Iowa 1978).

Although there has been a substantial change in the income of Ronald, we believe it would be inequitable under the circumstances of this case to modify the alimony and insurance provisions. There is still a substantial disparity between the income of Ronald and Darlys, as well as their net worth, and Darlys's health conditions have changed substantially since the entry of the decree.

Darlys requests attorneys fees on appeal. The award depends upon the party's ability to pay and whether the party has been obligated to defend the trial court's

decision on appeal. *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995). We believe Darlys should be awarded $750 for appellate attorneys fees.

We do not believe the trial court erred in ruling on Ronald's motion to modify the decree. We affirm and award Darlys the sum of $750 as appellate attorneys fees.

AFFIRMED.