FILED
MAR 2 3 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KAREN J. GRUBER AND LARRY R. GRUBER

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Upon the Petition of)
KAREN J. GRUBER,)
Petitioner-Appellant,)
And Concerning)
LARRY R GRUBER,)
Respondent-Appellee.)

Filed March 23, 1988

7-450
87-435

Appeal from the Iowa District Court for Fremont County (No. DM 412), Keith E Burgett, Judge.

Petitioner appeals a district court order reducing respondent's child support obligation due to a change of circumstances. **AFFIRMED.**

Gary T Gee of Shenandoah for petitioner-appellant.

Vicki R Danley of Sidney for respondent-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

Karen Gruber appeals the district court order reducing Larry Gruber's child support obligation due to a change in circumstances. She asserts the trial court erred by considering evidence from the original decree rather than the evidence only from the last modification action. She also claims the trial court erred in reducing the support obligation, and by not awarding her attorney fees at the trial level. She requests appellate fees as well. We affirm.

The parties were divorced in August, 1982. Pursuant to the decree, Larry paid $500 a month for the support of the parties' one child. He was also required to make payments to Karen for her interest in the parties' property. In August of 1983 Larry petitioned to modify the child support based on real estate fluctuations and increased interest payments. This modification was denied.

In August of 1985 this modification petition was filed. The trial court granted the request because it found Larry's financial condition had worsened, while Karen's had improved. The court reduced the obligation to $225 per month, and this appeal follows.

We review this action de novo. Iowa R. App. P. 4. We can modify the child support obligation only where there has been a material and substantial change in circumstances since the date of the decree or since any subsequent modification. In re Marriage of Mueller, 400 N.W.2d 86, 88 (Iowa App. 1986). An award entered in a final decree is not to be regarded as a variable sum to be adjusted either upward or downward with each fluctuating change in the respective conditions of the parties. Id. The burden rests on Larry to establish a substantial change in circumstances by a preponderance of the evidence. Id. We consider the factors enumerated in Iowa Code section 598.21(8) (1985).

Karen's first contention is that the trial court erred in overruling her pretrial and posttrial motions. She asserts the trial court should only have considered

evidence of a change in circumstances from the date of the first modification proceeding. She cites In re Marriage of Brown, 247 N.W.2d 2 (Iowa 1976) as support.

We agree that Brown supports the proposition that a court only views the evidence of a change in circumstances from the date of a prior modification when the same issue is being examined. However, in this case there was no prior modification of the child support obligation. Larry's first request was denied. We therefore conclude the trial court did not err in overruling Karen's pretrial and posttrial motions.

We now consider the court's reduction in the child support obligation. We conclude that Larry has met his burden and modification was necessary.

Since the parties' dissolution in 1982, Larry's financial condition has worsened. His yearly income has gone from an average of $20,000 in 1982 to a loss in excess of $20,000 in 1985. This drastic reduction in income was due to the poor farm market conditions. His net worth has decreased from approximately $320,000 at the time of the dissolution to approximately $50,000 - $60,000 at this time. Larry's resources also have been diminished. He was forced to sell a cattle herd to reduce debt and has lost one of his farms.

Conversely, Karen's economic situation has improved. She has reentered the job market and earns a net weekly income of $220. She also receives a return on her investment of her property settlement. Karen has done well to improve her lot and we are not attempting to penalize her for that, but both parents are responsible for the support of their children and these costs must be apportioned according to each parties' ability to contribute. See In re Marriage of Anderson, 400 N.W.2d 84, 86 (Iowa App. 1986). We therefore hold the trial court did not err in reducing Larry's child support obligation.

Karen contends she should have been awarded attorney fees by the trial court She asserts the trial court has the power to award reasonable fees and should have done so We will also consider Karen's request for appellate fees at this time

Attorney fees are recoverable in a modification action, but rest within the court's discretion Mueller, 400 N W 2d at 89, In re Marriage of Estlund, 344 N W 2d 276, 281 (Iowa App 1983) Considering the fact that Karen did not prevail at the trial level and Larry's financial condition, we conclude the trial court did not abuse its discretion We also conclude an award of attorney fees on appeal is not justified Karen's request is, therefore, denied. Costs are taxed to Karen

AFFIRMED