IN THE COURT OF APPEALS OF IOWA

No. 6-057 / 94-1892

IN RE THE MARRIAGE OF ELIZABETH ANN UNDERWOOD AND BRIAN LEE UNDERWOOD

Upon the Petition of

ELIZABETH ANN UNDERWOOD n/k/a ELIZABETH ANN EHN,

Petitioner-Appellant/Cross-Appellee,

And Concerning

BRIAN LEE UNDERWOOD,

Respondent-Appellee/Cross-Appellant.

FILED
APR 23 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

Elizabeth challenges the order modifying the parties' dissolution decree to allow Brian to utilize the tax exemption for all three minor children. Brian cross-appeals challenging the district court's failure to modify other various provisions of the dissolution decree. **AFFIRMED ON BOTH APPEALS.**

Joseph G. Bertogli, Des Moines, for appellant.

Donald A. Beneke, Pocahontas, for appellee.

Heard by Habhab, P.J., Huitink, J., and McCartney, S.J. *

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

HABHAB, P.J.

Elizabeth and Brian's marriage was dissolved on February 3, 1992. The parties have three minor children. The decree awarded Elizabeth custody and required Brian to pay $625 per month in support. It also allowed Brian to claim all children as an income tax deduction until such time as Elizabeth could benefit from the deduction. The decree awarded Brian visitation and required him to bear the burden of all costs associated with the visitation.

In August 1992, Elizabeth remarried. In March 1993, she began employment at a care center before voluntarily resigning in March 1994. For the 1993 tax year, Elizabeth and her new husband claimed all three children as exemptions, apparently because she could then benefit from them.

On February 23, 1994, Brian filed an application for modification of the parties' dissolution decree. He claimed the likelihood of overtime income in the future had decreased and his net income had reduced as a result. He also claimed Elizabeth now has the ability to earn an income but has voluntarily not done so. He sought to have his support payments reduced, the duration of those payments reduced, the transportation costs associated with visitation split between the parties, and the ability to claim the children as a deduction on his taxes. The district court granted the modification only to the extent it allowed Brian to take the children as a deduction as long as he was current on his child support.

Elizabeth appeals and Brian cross-appeals.

I. ***Scope of Review.*** In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. *Mears v. Mears*, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing *In re Marriage of Vetternack*, 334 N.W.2d 761, 762 (Iowa 1983)).

II. ***Tax Exemptions.*** Elizabeth contends the district court erred in determining Brian should be awarded dependency exemptions. The original decree provided Brian was to receive all three children as income tax exemptions until such time as Elizabeth could benefit from the use of the children as income tax exemptions. The district court made the following findings:

> [Elizabeth] is unemployed; [Brian] is paying the sum of $625 per month for child support. [Brian] should be granted the tax exemption for all three children each year provided that he is current in his child support payments as of December 31 of each year.

We find the district court did not fail to do equity in making this ruling; thus, we refuse to disturb it on appeal.

III. ***Cross-Appeal.*** On cross-appeal, Brian contends the district court erred in failing to modify the dissolution decree by (1) reducing the child support obligation; (2) reducing the duration of the child support obligation; and (3) increasing Elizabeth's obligation to provide transportation for visitations.

The district court, in examining the child support obligation, determined Brian's net monthly income was approximately $1700 at the time of the decree and approximately $1500 at the time of the modification. Elizabeth's net monthly income at the time of the decree was approximately $200 and her earning capacity was approximately $573 at the time of the modification.[1] We find these approximations to be appropriate. The district court then determined the child support obligations using these net monthly income amounts and concluded there was not a substantial and material change warranting a modification. We agree.

Brian also asserts the duration of the child support obligation should be amended. The decree provided for termination of the child support obligation when each child: (1) graduates from college; (2) dies; (3) marries; (4) completes a course of higher education which is less than a four-year college degree; or (5) attains the

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[1] The district court found Elizabeth voluntarily quit her job in March 1994. As a result, the district court deemed it proper to determine Elizabeth's earning capacity. We agree with this determination.

age of 22, whichever occurs first. Brian contends termination should, instead, occur when each child: (1) attains the age of 18 or graduates from high school, whichever occurs last; (2) dies; (3) marries; or (4) becomes self-supporting, whichever occurs first. We find there has been no showing of a substantial and material change in circumstances which would support the modification Brian seeks. Consequently, the district court did not err in refusing to modify this provision of the dissolution decree.

Brian's final contention on cross-appeal is the district court erred in failing to modify the decree to increase Elizabeth's transportation obligations for visitations. Brian acknowledges both parties continue to live in the same towns as they did when the dissolution decree was entered. As a result, we conclude there has not been a substantial and material change in circumstances which would support a modification of the dissolution decree.

Upon consideration of all arguments raised by both parties on appeal and cross-appeal, we affirm the ruling of the district court.

AFFIRMED ON BOTH APPEALS.