



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KAREN L. WALDON AND DEANE R. WALDON

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Upon the Petition of)

KAREN L. WALDON,)

Filed June 24, 1980

Petitioner-Appellant,)

And Concerning)

DEANE R. WALDON,)

0-183
2-64309

Respondent-Appellee.)

Appeal from Scott District Court - J. Hobart Darbyshire, Judge.

Petitioner-appellant appeals from trial court order modifying the decree dissolving her marriage to respondent-appellee. REVERSED.

John R. Lewarne of Klockau, McCarthy, Lousberg, Ellison & Rinden, Rock Island, Illinois, for petitioner-appellant.

C. J. Munson of Munson Law Firm, Bettendorf, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Petitioner, Karen Waldon, appeals from trial court order modifying the decree dissolving her marriage to respondent, Deane Waldon.

The matter in issue is the elimination by the trial court of Deane's obligation to make alimony payments to Karen of \$300 per month. Alimony payments in that amount were required of Deane in the original dissolution decree entered August 25, 1973. His application for modification seeking elimination thereof was filed July 25, 1979, and granted by the trial court on September 21, 1979.

On appeal, Karen asserts that Deane has failed to establish a material change in circumstances not within the contemplation of the court at the time of the original decree. She urges that absent such a showing, the request for modification should have been denied. On our *de novo* review pursuant to Iowa R. App. P. 4, we agree with this contention and reverse the trial court's order.

Those changes in circumstances relied upon by Deane in his request for modification include: (1) that the condominium which was awarded to Karen in the original decree has now been sold, thereby reducing her monthly financial obligations; (2) that the children of the parties, who were placed in Karen's custody, are presently living in their own apartment, separate from Karen; (3) that Karen has experienced a substantial increase in income; and (4) that Deane's financial condition has deteriorated. The trial court found no merit in items (3) and (4). We agree that such finding was proper. As to item (2), it appears without dispute that Deane acquiesced in this arrangement and it resulted in an increased financial burden to Karen rather than a decreased burden.

Lastly, as to item (1), it must be presumed that the court entering the original decree contemplated all of the obvious options available to the parties. Mears v. Mears, 213 N.W.2d 511, 516 (Iowa 1973). The sale of an asset awarded outright to one of the parties, thereby reducing the economic burdens which naturally flow from that asset, is certainly an obvious option. This is a situation presented by Karen's sale of the condominium in the present case. Indeed, the evidence indicated that it was within the contemplation of both parties at the time of the decree that the condominium would be sold.

Close scrutiny of Deane's claim reveals that in fact it is not based on an unanticipated change in circumstances. It is, in reality, a claim that that which should have been provided in the original decree with respect to an anticipated circumstance was not included. On the present record, this claim affords him no basis for relief. The trial court's order is reversed with directions to deny the application for modification.

REVERSED.

Oxberger, C.J., and Snell, J., concur. Donielson and Johnson, JJ., dissent.

I would affirm trial court's determination respondent has shown the requisite change in circumstances to warrant an elimination of his alimony obligation. Although sale of the condominium undoubtedly could have been an option within trial court's contemplation, its sale has resulted in a significant decrease in petitioner's monthly housing expense. The parties' daughters have now moved out of petitioner's household and into their own apartment. I do not agree with the majority's implied conclusion Deane's acquiescence in the girls' living arrangement precludes his using that as a basis for modification of the alimony provisions of the decree. In addition, petitioner's gross income has increased. All of these developments are basically permanent in nature and should have significantly reduced petitioner's difficulties in supporting herself.

Although petitioner argues she still is in need of financial assistance from respondent, it appears her financial difficulties are not due to her inability to support herself, but rather an attempt to support two households, one for herself and one for her daughters. While alimony and child support are closely related, I do not believe the present posture of this case permits an alteration of the child support provisions of the decree to aid petitioner in her efforts to support the parties' daughters where, as here, the dependent children are living in their own apartment and no application for modification of the child support provisions of the original decree has been made by petitioner.

Donielson, J., joins in this dissent.