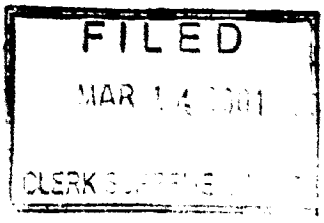
IN THE COURT OF APPEALS OF IOWA

No. 1-039 / 00-0943
Filed March 14, 2001

IN RE THE MARRIAGE OF DENNIS R. BROWN AND JANE L. BROWN

Upon the Petition of
DENNIS R. BROWN,
Petitioner-Appellee,



And Concerning
JANE L. BROWN,
Respondent-Appellant.

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge.

The respondent appeals a district court ruling denying her petition to modify the alimony provisions of the parties' dissolution decree. **REVERSED.**

John S. Allen and John B. Whiston of the Clinical Law Program of the University of Iowa, Iowa City, and Allison Mulder and Aijun Zhang, Student Legal Interns, for appellant.

Gary J. Rolfes of Mayer, Lonergan & Rolfes, Clinton, for appellee.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

The respondent appeals a district court ruling denying her petition to modify the alimony provisions of the parties' dissolution decree. Respondent argues: (1) a substantial change in circumstances justified an increase in alimony to $600 per month; and (2) the district court erred in concluding the decree's alimony provision could not be modified absent proof of an agreement between the parties that an increase in petitioner's income would warrant modification. We reverse.

Background Facts and Proceedings. The marriage of Dennis Brown (Dennis) and Jane Brown (Jane) was dissolved by decree of dissolution of marriage filed January 24, 1986. The decree awarded the parties joint physical custody of their daughter, Tracy, born January 1983, with Jane responsible for the child's physical care. The court required Dennis to pay child support of $25 per week, and alimony of $1 per month. The decree provided in pertinent part:

> 5. That [Dennis] is employed at Burggraaf Marine Construction, Inc., and his net income is $374.00 per week; that [Jane] has Multiple Sclerosis and is not employed. [Jane] receives Social Security benefits in the sum of approximately $737.00 per month and the parties' minor child receives Social Security benefits in the sum of approximately $363.00 per month.
>
> . . .
>
> 7. . . . That the child support in the sum of $25.00 per week is based on the fact that [Jane] is receiving Social Security benefits and the minor child is receiving Social Security benefits. That any decrease of termination of Social Security benefits to either [Dennis] [sic.] or the minor child would be a basis for modification of this Decree as to child support.
>
> . . .
>
> 11. That [Jane] shall receive the sum of $1.00 per month as alimony. . . . The Court intends to leave the matter of alimony open in that [Jane] is presently receiving approximately $737.00 per month in Social Security benefits. That if [Jane's] Social Security

> benefits are reduced or terminated, it is intended that such reduction or termination would be a basis for [Jane] making application for modification of this Decree with respect to alimony.

Jane's M.S., diagnosed in 1985, causes chronic fatigue, urinary problems, poor balance, impaired vision in one eye, weight gain, memory problems and depression. She takes several medications, including antidepressants, and is not employable.

At the time of the decree, Jane's annual household income was approximately $14,400, which included her social security benefits, Tracy's social security benefits, and child support from Dennis. Dennis's net annual income at the time of the decree was approximately $19,500. Jane's annual income currently totals approximately $14,424, which includes her $1044 per month social security disability payment and approximately $158 per month from babysitting. Dennis's annual income was approximately $48,000 in 1999.

Jane sought increases in child support in 1991 and 1998, due to substantial increases in Dennis's income. The parties negotiated increases in child support payments to $75 per week and $140 per week, respectively.

In August 1999, Tracy began living with her paternal grandparents. The grandparents sought redirection of the child support payments by Dennis to them. Jane did not resist the application for redirection, and the court entered an order granting the grandparent's request.

In February 2000, Jane filed a petition to modify the decree, seeking an increase in alimony payable by Dennis. She claimed the loss of child support and social security benefits for Tracy, combined with Dennis's substantial

increase in income, necessitated a modification. The district court, after a hearing on the matter, dismissed Jane's application for modification. Jane appeals.

Standard of Review. Our review is de novo. Iowa R. App. P. 4; *In re Marriage of Rietz*, 585 N.W.2d 226, 229 (Iowa 1998). We will not disturb the trial court's conclusions unless there has been a failure to do equity, even though we engage in a de novo review. *In re Marriage of Jacobo*, 526 N.W.2d 859, 864 (Iowa 1995). Where there are no factual issues in dispute, the construction of a dissolution decree is a matter of law. *Serrano v. Hendricks*, 400 N.W.2d 77, 78-79 (Iowa Ct. App. 1986).

Interpretation of Alimony Provision. A dissolution of marriage decree is susceptible to interpretation on the same basis as other instruments. *Sieren v. Bauman*, 436 N.W.2d 43, 46 (Iowa 1989). The determining factor guiding our inquiry is the intent of the dissolution court as gathered from the decree and other proper evidence. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa Ct. App. 1997). In determining intent, we take the decree by its four corners and try to ascertain from it the intent as disclosed by the various provisions of the decree. *Serrano*, 400 N.W.2d at 79. Extrinsic evidence may be considered "not to show the language means something different than what is said in the instrument [decree] involved, but to show what is meant by what is said." *Id.* (quoting *Peters v. Peters*, 214 N.W.2d 151, 157 (Iowa 1974)). We are required to give effect to "that which is both expressed and implied." *Id.* We seek to give effect to the

language of the entire decree in accordance with its commonly accepted and ordinary meaning. *Id.*

The parties disagree over whether the decree's alimony provision could be modified under these circumstances. Jane contends the parties "left the door open" to future modification by providing for the $1 per month alimony award. *See In re Marriage of Wessels*, 542 N.W.2d 486, 489 (Iowa 1995) (Where no alimony is initially awarded the decree cannot be modified to allow any). We agree.

The express provision for modification in the event Jane's social security benefits were terminated or reduced does not preclude modification for other reasons. The decree provides the reduction of social security benefits could be "a basis," but not the sole basis, for modification.[1] The child support provision, which contains similar language, did not preclude modifications to child support in 1991 and 1998.

The extrinsic evidence introduced at trial by Dennis does little to assist in determining the intent of the dissolution court. To support his contention the dissolution court intended to leave the matter of alimony open only in the event Jane's social security benefits were reduced or terminated, Dennis points to a letter written by Jane's attorney during discussions for modification of the decree with respect to child support in 1998. The letter states, in pertinent part:

---

[1] The decree was granted in 1986. Since that time, this court has suggested the district court not include language in a decree specifying the grounds that would justify a modification. *See In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997) ("The appellate courts of this state, although stopping short of forbidding the practice, have discouraged retention of jurisdiction to modify dissolution decrees without a showing of change in circumstances.")

> With respect to alimony, we cannot agree to remove the $1.00 per month alimony obligation. The reason for this is that in the event your former wife, for some reason, were no longer eligible to receive Social Security disability, she would then no doubt be making a request for an increase in alimony. While I do not expect this to happen, it's feasible. As you are aware, this is the reason that the provision was inserted in the first instance.

Dennis argues the letter, combined with testimony from Dennis and his attorney at the modification hearing, show the alimony provision could not be modified were his income to increase. We disagree. While the letter indicates the parties contemplated a change in alimony were Jane's social security benefits to be reduced or terminated, the evidence presented by Dennis does not explicitly preclude modification on other grounds. *See In re Marriage of Phares*, 500 N.W.2d 76, 79 (Iowa Ct. App. 1993) (Parties can contract and dissolution courts can provide alimony is not modifiable, but when the decree is silent on the issue, the award may be modified on proper showing).

Even if, given Dennis's narrow reading of the alimony provision, we were to conclude it was not modifiable under these circumstances, equity requires a different result. Subsequent changes demand the original alimony order cannot, in fairness and equity, continue to stand. *See Wessels*, 542 N.W.2d at 489 ("Under our cases there are some rare situations where, notwithstanding an agreement and decree to the contrary, later occurrences are so extreme in their nature as to render the initial understanding grossly unfair and therefore subject to change.").

We conclude the alimony provision did not preclude modification under these circumstances. The district court erred in concluding otherwise.

Modification of Alimony Provision. A court may modify alimony provisions of a dissolution decree when there has been "a substantial change in circumstances." Iowa Code § 598.21(8) (1999). The section provides in relevant part:

> In determining whether there is a substantial change in circumstances, the court shall consider the following:
> a. Changes in the employment, earning capacity, income or resources of a party.
> . . .
> c. Changes in the medical expenses of a party.
> . . .
> e. Changes in the physical, mental, or emotional health of a party.
> . . .
> k. Other factors the court determines to be relevant in an individual case.

Iowa Code § 598.21(8) (1999). The party seeking modification must prove the change in circumstances by a preponderance of the evidence. *Rietz*, 585 N.W.2d at 229. The following relevant principles may be considered when ruling on a petition for modification:

> (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered.

In re Marriage of Walters, 575 N.W.2d 739, 741 (Iowa 1998).

Based upon our de novo review of the record, we conclude Jane has proved by a preponderance of the evidence a substantial and material change in circumstances has occurred since the entry of the decree. Dennis's income has

increased substantially, while Jane's income has remained nearly the same. Jane's health has deteriorated. Although the decretal court may have contemplated the termination of child support and governmental assistance Jane received for the parties' daughter, it could not have contemplated the substantial increase in Dennis's income, coupled with Jane's deteriorating health.

We modify Dennis's alimony obligation to require him to pay alimony of $300 per month under the terms of the dissolution decree.

REVERSED.