FILED
JUN 28 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-387 / 92-2060

IN RE THE MARRIAGE OF M. WAYNE OLTROGGE AND NADA S. OLTROGGE

Upon the Petition of
M. WAYNE OLTROGGE,

Appellant,

And Concerning
NADA S. OLTROGGE,

Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Louie F. Beisser, Judge.

The husband appeals a ruling of the district court denying his application for modification of the parties' dissolution decree. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Judith O'Donohoe of Eggert, Erb, Ott, O'Donohoe & Frye, Charles City, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab, JJ.

HAYDEN, J.

The district court dissolved the marriage of M. Wayne and Nada Oltrogge on July 3, 1984. On December 30, 1986, the district court approved a stipulation relating to child custody, division of property, and support. The stipulation provided Wayne would pay Nada alimony. The alimony payments increased progressively from $700 a month to $900 a month effective May 1988.

In June 1991 Wayne filed an application for modification of alimony. A hearing was held on the matter. Wayne was born on January 14, 1938. Wayne testified when the parties separated he was practicing law in Clear Lake, Iowa, making about $40,000 per year. Wayne ran into economic difficulties. The Internal Revenue Service brought a criminal prosecution against Wayne resulting in a judgment of over $67,000. His license to practice law in Iowa was suspended from November 23, 1990, until February 14, 1992. Wayne made no alimony payments during this time, resulting in an arrearage of $20,600. Wayne testified he felt it would be another three years before he gets his practice back to where it was before all the problems occurred. Wayne has remarried. His new wife works part-time in his office.

Nada was born on August 21, 1941. Nada testified she was an alcoholic. Following the dissolution Nada received treatment and is currently sober. She returned to school and received some computer training, and she is currently

employed at Northern Trails Area Education Agency as the coordinator for education services. In 1992 she earned approximately $13,721.76. Nada also received an inheritance of $37,000 from her mother. She used a portion of the money to purchase a house and pay expenses.

On November 23, 1992, the district court denied Wayne's application for modification. The district court found Wayne failed to prove a substantial change of circumstances. The district court found Wayne's reduction of income was a result of his voluntary self-inflicted acts.

Wayne appeals. He requests $1500 for his appellate attorney fees. Nada also requests attorney fees on appeal.

Our review in a case such as this is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

We first address Wayne's argument he no longer should be obligated to pay alimony to Nada due to her increase in income. Wayne maintains the stipulation for alimony was agreed upon because Nada was an incurable alcoholic and he did not believe she would ever be able to maintain

employment. He believes her earnings of $13,000 per year qualifies as a substantial change in circumstances. We disagree.

It is clear at the time of trial on the dissolution Wayne believed Nada was unemployable due to her alcoholism. However, the amount of alimony awarded at that time would not, by itself, have provided total support for Nada. At $900 a month, Nada's yearly income would be $10,800. Nada testified she realized at the time the stipulation was signed she would need to work in order to support herself. Combining her 1992 salary of 13,700 with the 10,800, Nada has a total income of approximately $25,000 a year.

In the petition for order of modification filed by Wayne, he suggests the substantial change of circumstances is not his wife's employment but rather his unemployment. Wayne refers to his problems regarding his tax evasion and his subsequent suspension from the bar as reasons for his reduction in salary and requested reduction in alimony payment to Nada. The trial court found, and we agree, the reduction in Wayne's income was solely a result of his own action or inaction. Nada should not be penalized for Wayne's failure to file his income taxes which eventually led to his suspension from the bar and his inability to practice law.

It is obvious from reviewing the record, at the time of separation Oltrogges were living quite well. When

determining whether a modification of a divorce decree is proper, one must look at the lifestyles established by the parties during the marriage. In re Marriage of Gillilland, 487 N.W.2d 363, 366 (Iowa App. 1992). The amount of alimony awarded Nada clearly would not have allowed her to maintain the same lifestyle to which she had grown accustom. It is reasonable and logical it would be necessary for her to return to the work force in some fashion.

It is evident the reasons for the modification request stem from the demise of Wayne's career. This court has noted where the change in financial condition is due to the fault or voluntary wastage and dissipation of one's talents and assets, modification will be denied. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We stand by this proposition and find it applicable to this case. We affirm the trial court's refusal to modify Nada's alimony.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Both parties request attorney fees on appeal; however, neither party has the ability to pay for the other's fees.

We determine no award should be made with regard to attorney fees. Both parties shall be responsible for their own fees.

AFFIRMED.