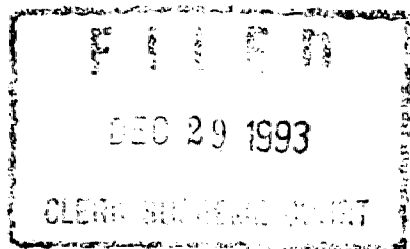


IN THE COURT OF APPEALS OF IOWA

No. 3-241 / 92-940



IN RE THE MARRIAGE OF MAJA ELISABETH RATER AND
OTHO LEONARD RATER

Upon the Petition of

000493

MAJA ELISABETH RATER,

Appellee,

And Concerning

OTHO LEONARD RATER,

Appellant.

Appeal from the Iowa District Court for Polk County,
George Bergeson, Judge.

Respondent husband appeals the district court decision
modifying his child support obligation. **AFFIRMED.**

Francis C. Hoyt, Jr., Des Moines, for appellant.

Kathy Goudy, Drake Legal Clinic, and Paula B. Givens,
Student Legal Intern, Des Moines, for appellee.

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

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OXBERGER, C.J.

Maja and Otho Rater were married in 1964, and after twenty-three years of marriage, divorced in October 1987. The parties had seven children during the marriage. Four of the children were minors at the time of the dissolution: Christopher Peter Rater, born April 12, 1974; David Lee Rater, born January 23, 1978; Bettina Marie Rater, born October 18, 1980; and Diedra Lucille Rater, born November 30, 1983.

At the time of the dissolution, Otho was employed as an associate professor at Grand View College in Des Moines. He earned about \$25,000. Maja was not employed. In the dissolution decree, the district court granted Maja custody of the children. Otho was ordered to pay child support of \$850 per month. This amount was to be reduced by \$100 as each of the children reached the age of eighteen.

Maja filed an application for modification of the decree on June 14, 1991. She asked for an increase in Otho's child support obligation.

A hearing was held on April 16, 1992. Maja testified that the most she received in child support from Otho was \$775 per month, and this was after his wages were garnished. In 1989 Maja resumed her education. At the time of the modification hearing, she planned on graduating in the spring of 1993 from Drake University with a major in sociology. Maja's only sources of income were the child support payments and student loans.

The parties' child Christopher had turned eighteen on April 12, 1992, shortly before the modification hearing. Christopher planned on attending college in the fall of 1992.

Additionally, evidence was presented at the hearing to show Otho's income had increased to \$32,057 in 1990. Also, Otho voluntarily resigned from his position at Grand View effective at the end of the 1991-1992 academic year.

The district court found there had been a substantial change in circumstances since the decree of dissolution was filed. The court noted that Maja was a student and unemployed, and the family expenses had increased. The court also found Otho had voluntarily reduced his income. The court ordered Otho to pay child support of \$816 per month for the three minor children. He was also ordered to pay one-third of Christopher's expenses for attending a State-supported university. Otho's responsibility was estimated to be \$217 per month for Christopher's college expenses. Otho appealed.

Our scope of review in this equitable action is de novo. Iowa R. App. P. 4. The trial court has reasonable discretion in determining if modification of a dissolution decree is warranted. In re Marriage of Shepherd, 429 N.W.2d 145, 147 (Iowa 1988). On appeal we do not disturb the trial court's conclusions unless there has been a failure to do equity. Id.

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Otho contends there has not been a substantial change in circumstances sufficient to constitute a basis for modification of the dissolution decree. He believes his income did not increase sufficiently to be considered a change in circumstances. He also believes that due to his recent loss of employment his child support obligation should not have been increased.

A party seeking a modification of a dissolution decree must establish that there has been a substantial change in circumstances from the time the decree was entered making it equitable and just that different terms be fixed. In re Marriage of Dawson, 467 N.W.2d 271, 274 (Iowa 1991). A decree is not to be modified unless its enforcement will be attended by positive wrong or injustice as a result of changed circumstances. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). 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 Eyerly, 462 N.W.2d 681, 682 (Iowa 1990). The burden is on the part seeking modification to prove a substantial change in circumstances by a preponderance of the evidence. In re Marriage of Feustel, 467 N.W.2d 261, 263 (Iowa 1991).

We determine there has been a substantial change of circumstances in this case. At the time the dissolution decree was entered the court did not anticipate that Maja would go to college, and thus, be out of the job market for

several years. Also, the dissolution decree awarded Maja the parties' residence and it was anticipated she would not have house payments. However, the house was actually owned by Otho's father, and Maja was required to rent a residence for herself and the children.

Furthermore, we disregard Otho's temporary decrease in income. Like the district court, we find Otho voluntarily reduced his income. Generally, a modification should be granted if there has been a substantial lowering of earning power for a sustained period of time. Dawson, 467 N.W.2d at 275. This principle, however, does not apply when the inability to pay child support is self-inflicted or voluntary. Id.

All of these factors taken together convince us that there has been a substantial change in circumstances sufficient to warrant a modification of the child support provisions of the dissolution decree. We determine Otho's child support obligation should be increased and Otho should contribute to Christopher's college expenses. We affirm the modifications made by the district court. Costs of this appeal are assessed to Otho.

AFFIRMED.

Habhab, J., concurs; Sackett, J., dissents.

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SACKETT, J. (dissenting)

I dissent. I would dismiss Maja's petition for modification.