

FILED

JAN 25 1979

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

IN RE THE MARRIAGE OF FRANCES YAMEN AND GEORGE E. YAMEN

Upon the Petition of
FRANCES YAMEN,

Appellee,

And Concerning
GEORGE YAMEN,

Appellant.

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Filed January 25, 1979

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2-61639

Appeal from the Polk District Court - Harry Perkins, Judge.

Husband appeals from denial of application to modify alimony provision of dissolution decree. Affirmed.

Earl W. Sutton, of Des Moines, for appellant.

Thomas P. Hyland, of Hyland, Laden & Pearson, P.C., of Des Moines, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent, George E. Yamen, appeals from the trial court denial of his application to modify the alimony provision of the August 15, 1975 decree which dissolved his marriage to petitioner, Frances Yamen. Our review is de novo. Rule 4, Rules of Appellate Procedure. We give weight to the findings of the trial court but are not bound by them. Rule 14(f)(7), R. App. P.

At the time of the 1975 dissolution, both parties were near 60 years of age. George was employed by John Deere, and had a gross annual income of \$16,000. Under the terms of the decree, George was ordered to pay \$100 per month alimony to Frances. George retired in 1977 and his income has since been reduced to a net of \$770 per month, including a pension, social security retirement benefits, and receipt of a \$100 monthly installment payment on a real estate sales contract. Frances is also retired. Her monthly net income, including social security and the alimony payment, is \$387. Her social security allotment increased \$82 per month when George retired.

George seeks termination of his alimony obligation because of the decrease in his income since retiring, and the \$82 per month increase in Frances' income resulting from the same event. To warrant modification of an alimony provision of a dissolution decree, the proponent of the modification must establish a substantial change of circumstances since the time of the original decree, affecting the parties' relative financial positions in a manner not contemplated by the court which fashioned the decree. Page v. Page, 219 N.W.2d 556 (Iowa 1974). We conclude that the evidence presented in this case does not warrant modification of the alimony provision. We cannot find that George's retirement and the resulting decrease in his income were matters not contemplated by the 1975 dissolution court. On the contrary, the record indicates these matters were discussed at the original dissolution hearing, and at that time George underestimated the size of his pension. Frances's need of the alimony awarded continues. The trial court properly refused to change the alimony provision of the 1975 decree.

AFFIRMED.