

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT E. HICKS AND SHARLEEN L. HICKS

FILED

AUG 27 1986

CLERK SUPREME COURT

134

Upon the Petition of
ROBERT E. HICKS,

)

Petitioner-Appellant,

)

Filed August 27, 1986

And Concerning
SHARLEEN L. HICKS,

)

6-235
85-1204

)

Respondent-Appellee.

)

Appeal from the Iowa District Court for Black Hawk County (No. 32496)

- James L. Beeghly.

Petitioner appeals from trial court's order modifying a temporary support order in his dissolution action. He claims the level of support fixed was too high. **AFFIRMED AS MODIFIED.**

Terry Diane Parsons, of Olsen, Parsons, & Ament, Cedar Falls, for petitioner-appellant.

David L. Takes and Jay P. Roberts, of Swisher & Cohrt, Waterloo, for respondent-appellee.

Joseph Moothart and Leslie Knock, of Mershon, Snow, Knock & moothart, Cedar Falls, for the minor children.

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

SACKETT, J.**135**

Petitioner Robert Hicks and Respondent Sharleen Hicks were married in 1971. They have two minor children. Their daughter suffers from a form of mental retardation. In addition to these children, respondent's son by her first marriage, who is now in college, was adopted by Robert.

Robert filed a petition for dissolution of the marriage in August, 1983. In November, 1983, the trial court ordered Robert to pay support of \$400 per week plus college tuition of \$487 monthly. Robert was incarcerated at the time.

In October, 1984, after his release from prison, Robert filed an application to modify the support. He contended he was unable to pay the support because he now had lodging and board expense, and because he had increased expenses to visit the children. Sharleen and the children had left Iowa and were living in Louisiana. Robert also contended because the real estate market had dropped he was unable to pay the support ordered. The trial court amended the order to require Robert to pay \$300 per week. Robert appeals contending \$300 per week is excessive.

The court may order either party to pay the clerk a sum for the separate support and maintenance of the other party and the children. Iowa Code §598.11. In evaluating an order for temporary support we look at the assets and income of the parties as well as their respective needs. We recognize both parties have substantial needs and both have an obligation to assist with the support of the children. We must, however, assess their needs in accordance with available monies. See Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976).

Robert had a plumbing business and in the five months prior to the second hearing the business netted an average of \$1,000 per month. The parties have

a net worth of about \$90,000. The parties' equities are primarily in various parcels of real estate. Many of the parcels are subject to mortgages and delinquent taxes. The parcels are not easily liquidated in the current market and have a negative cash flow.

We agree with Robert the support is inequitable and modify the support to \$150 per week commencing January 3, 1985.¹ We reject Robert's argument the modification should be retroactive to the date of filing.

AFFIRMED AS MODIFIED.

¹ The parties had agreed the modification be made retroactive to this date.