FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-299 / 91-1522

IN RE THE MARRIAGE OF JANE ANN OLSON AND DAVID JON OLSON

Upon the Petition of

JANE ANN OLSON n/k/a JANE ANN SCHWICKERATH,

Appellant,

And Concerning

DAVID JON OLSON,

Appellee.

Appeal from the Iowa District Court for Fayette County, John Bauercamper, Judge.

The wife appeals from a district court decision refusing to modify a dissolution decree as to child support. **AFFIRMED.**

Christopher F. O'Donohoe of O'Donohoe, O'Connor, O'Donohoe & Stochl, New Hampton, for appellant.

Jay D. Villont of Donohue Law Office, West Union, for appellee.

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

DONIELSON, P.J.

Jane and David Olson were married in August 1970 and divorced in January 1985. They had two children during the marriage: Sheree Rene Olson, born August 14, 1973; and Tiffany Marie Olson, born July 2, 1981. Jane has since remarried and her name in now Jane Schwickerath.

The dissolution decree incorporated a stipulation which gave the parties joint legal custody of the children, with Jane having primary physical care. David was ordered to pay child support of $200 per month per child. He was also ordered to pay alimony of $125 per month until December 1987. At that time Jane expected to move from Fayette, Iowa, where the parties had lived. The parties agreed that Sheree, who was then twelve years old, could decide during the summer of 1985 whether she wanted to move with Jane or stay in Fayette with David.

On August 5, 1985, the district court entered an order, based on Sheree's decision, placing her in the physical care of David. Jane had then decided to move to California.

In 1986, Jane returned to Iowa and took up residence in New Hampton. Sheree then expressed a desire to live with Jane. On August 26, 1986, the district court entered an order placing Sheree in the physical care of Jane.

The parties were ordered to submit financial affidavits to allow the court to determine an appropriate level of child support. Jane was employed by the Chickasaw County

Agricultural Stabilization and Conservation Service (A.S.C.S.), where her yearly income was about $9,600. Her net monthly income was $658. David was employed by Contel of Iowa where he earned $24,540 per year. His net income was $1,454 per month. On March 16, 1987, the court entered an order requiring him to pay child support of $180 per month per child.

In May 1990 Sheree decided she would rather live with David. She enrolled in the North Fayette School District. On October 15, 1990, David filed an application for modification of custody based on this change. Jane sought an increase in David's child support obligation for the younger child, Tiffany, who remained in her physical care.

Since the 1987 modification Jane has remarried. She also obtained employment as a legal secretary. Her present annual income is about $14,319, and she has net income of $924 per month. David is still working for Contel, where he earns $29,184 per year. His net income is $1,811 per month. Sheree graduated from high school in May 1991 and became eighteen years old on August 14, 1991.

The district court issued its order on September 5, 1991. The court determined David's child support obligation for Sheree ended on October 15, 1990. The court found there had been no substantial change in circumstances to warrant a modification of David's child support obligation for Tiffany. The court found that although both parties had experienced modest increases in income, the

degree of change would have been within the contemplation of the court at the earlier modification. Jane has appealed.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

Jane contends there has been a substantial change in circumstances since the 1987 modification order. She states that the modification order did not foresee that Sheree would leave her home to go live with David. Jane believes the child support guidelines should be applied to calculate David's child support obligation for Tiffany.

A court may modify orders for child support when there is a substantial change in circumstances. In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992). The adoption of the child support guidelines, standing alone, does not furnish the basis for a modification of a child support award. Id.[1]

To justify a modification, some material change must have occurred since the date of the original decree or any

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1. Effective July 1, 1992, Iowa Code section 598.21(9) has been amended so that a substantial change in circumstances will be deemed to exist when the court order for child support deviates by more than 10% from the amount recommended by the guidelines. However, this amendment is prospective only and we need not consider it here.

subsequent modification. In re Marriage of Fuestel, 467 N.W.2d 261, 263 (Iowa 1991). The circumstances which have changed must be those which were not in the contemplation of the court when the decree or subsequent modification was entered. Id. The party seeking a modification has the burden to prove a substantial change in circumstances by a preponderance of the evidence. Id.

Although each dissolution case must be considered on its own particular facts, we note the present case is similar to that of In re Marriage of Mueller, 400 N.W.2d 86 (Iowa App. 1986). In Mueller, the oldest child left the physical care of the mother to live with the father. Id. at 87. The mother then sought to modify the father's support obligation for the two children still in her care. Id. We refused to modify the father's support obligation because there had not been a substantial change in the financial situation of the parties. Id. at 89.

We conclude the change of Sheree's physical care from Jane to David is not a sufficient change in circumstances, standing alone, to modify David's support obligation for Tiffany. We also look to the financial situation of the parties. We agree with the district court's conclusion that neither parties' assets have changed substantially, and the changes in their incomes would have been within the contemplation of the court at the time of the 1987 modification. We determine Jane has not met her burden to show a substantial change in circumstances.

AFFIRMED.