IN THE COURT OF APPEALS OF IOWA

No. 3-198 / 92-1485

FILED
OCT 28 1993
CLERK SUPREME COURT

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IN RE THE MARRIAGE OF KATHERINE M. SANDERS AND STEVEN C. SANDERS

Upon the Petition of
KATHERINE M. SANDERS,

Appellee,

And Concerning
STEVEN C. SANDERS,

Appellant.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

The husband appeals the district court order denying his application for modification of the alimony and child support provisions of the decree dissolving his marriage. **AFFIRMED.**

Mark L. Chipokas and James L. Chipokas of the Law Offices of James L. Chipokas, Cedar Rapids, for appellant.

Kimberly A. Ten Eick and Gary L. Robinson of Klinger, Robinson, McCuskey & Ford, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ. Donielson, J., takes no part.

PER CURIAM 000452

Steven Sanders appeals the district court's denial of his application for modification of the alimony and child support provisions of the original dissolution decree. We affirm.

Steven and Katherine Sanders were divorced in 1969. The parties later reconciled. In 1974 the district court set aside the dissolution decree. In 1987 the parties adopted Elizabeth, born February 17, 1987. In March 1991 the parties were divorced for a second time.

At the time of the 1991 dissolution, Katherine was attending Kirkwood Community College. Katherine was receiving a Pell Grant for a portion of her schooling expenses and a day-care grant. She was unemployed and had no other income. Steven was farming with his father on his parents' farmstead. Steven reported a net income of $6500 for 1990.

The district court awarded Katherine primary physical care of Elizabeth. Pursuant to the dissolution decree, the court ordered Steven to pay $100 per week in rehabilitative alimony for four years and $100 per week in child support for Elizabeth. The remainder of the decree divided the parties assets and liabilities. The court ordered the real estate owned by the parties to be sold, all liens and encumbrances satisfied, and the remaining proceeds, if any, divided equally.

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In March 1992 Steven filed an application for modification of his alimony and child support obligations. Steven alleged his income had substantially decreased and Katherine's income had substantially increased in the one year since the dissolution decree was filed. He claimed the district court did not contemplate these changes in earning capacity when it set his alimony and child support obligations.

The district court denied the application to modify. In its order, the court stated the evidence did not indicate Steven had taken any steps to improve his financial condition. Steven had failed to follow the court's orders to sell some real estate and a car. He also had not attempted to use his college degree to improve his condition. The court noted Steven was claiming debts at the modification trial which existed at the time of the original decree. The court had found Steven was in a serious financial condition at the time of the original decree and he is still in a serious financial condition. The court acknowledged Katherine's income had increased; however, it stated her income increased only because she was unable to stay in school and had to seek employment once Steven quit paying support. Accordingly, the court determined Steven failed to show there had been a substantial change in circumstances not contemplated at the time of the decree. Steven appeals.

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Our review of this equity action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992). A modification of the support provisions of a dissolution decree is allowed only if there has been a showing of substantial change in circumstances since the entry of the original decree. Iowa Code § 598.21(8) (1991); In re Marriage of Feustel, 467 N.W.2d 261, 263 (Iowa 1991); In re Marriage of Phillips, 493 N.W.2d 872, 874 (Iowa App. 1992) (citations omitted). The applicant bears the burden of establishing by a preponderance of the evidence the circumstances have materially and substantially changed since the original decree was entered so as to justify modification. In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992) (citation omitted); In re Marriage of Masterson, 453 N.W.2d 650, 654 (Iowa App. 1990) (citations omitted). The changed circumstances must be "material and substantial, not trivial, more or less permanent or continuous, not temporary, and have to be such as were not within the knowledge or contemplation of the court when the decree was entered." In re Marriage of Bergfeld, 465 N.W.2d 865, 870 (Iowa 1991) (quotin Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973)). "The trial court has reasonable discretion in determining whether modification is warranted and that

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discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

Steven contends the parties' financial conditions have changed substantially and the change justifies a reduction of his alimony and child support obligations. Steven claims his income has decreased since the filing of the dissolution decree. At the time of the dissolution the district court determined Steven's annual gross income equaled $6500. One year later at the modification trial Steven, who continues to farm, alleged his annual adjusted gross income for 1990 equaled $2687. The general rule is a modification should be granted only if there has been a substantial lowering of earning power for a sustained period of time. In re Marriage of Walhert, 400 N.W.2d 557, 560 (Iowa 1987) (citations omitted). Steven also contends the amount of his liabilities has substantially increased. The record shows, however, several liabilities noted by Steven existed at the time of the 1992 dissolution. The liabilities were within the contemplation of the district court. The evidence presented by Steven fails to support a finding there has been a substantial change of circumstances. Steven has attempted to paint a picture in which he is in debt greater than at the time of the dissolution. We do not accept his contention.

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At the time of the original dissolution Katherine was attending school and was unemployed. At the time of the modification trial Katherine was employed with the News Printing Company. Her gross income, excluding alimony payments, equaled $10,250. Katherine's increase in income and future employment were within the contemplation of the district court at the time of the original dissolution decree. The court awarded her rehabilitative alimony to assist her in improving her skills. The purpose of rehabilitative alimony is to provide education so the recipient may increase his or her earning capacity and become self-supporting. See In re Marriage of Peterson, 491 N.W.2d 535, 538 (Iowa App. 1992). We conclude Katherine's employment and earning of income do not constitute a substantial change of circumstances.

Finally Steven argues the contributions from Katherine's live-in boyfriend reduces Katherine's need for alimony. We disagree. Not every change of circumstances is sufficient to justify a modification of support provisions. See Phillips, 493 N.W.2d at 874 (citing Sandler v. Sandler, 165 N.W.2d 799, 800 (Iowa 1969)). In this case the continuation of alimony is appropriate because its purpose is rehabilitative. See In re Marriage of Orgren, 375 N.W.2d 710, 712 (Iowa App. 1985). After a review of the circumstances involved in this case we conclude Katherine's need for support still exists.

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We determine Steven has failed to show a material and substantial change in circumstances necessary to modify the support provisions. The allegedly changed circumstances regarding the parties' financial conditions were within the contemplation of the district court when it dissolved the parties' marriage in 1992.

We affirm the district court's denial of Steven's application for modification. Steven's alimony and child support obligations shall remain unchanged as set forth in the original dissolution decree.

Costs of this appeal are assessed to Steven.

AFFIRMED.