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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF DIANN M. NOLAND n/k/a DIANN M. YDEEN
AND JON ROBERT NOLAND**

Upon the Petition of	)	
DIANN M. NOLAND n/k/a DIANN M. YDEEN,	)	215
	)	
Petitioner-Appellee,	)	Filed November 26, 1986
	)	
And Concerning	)	
	)	
JON ROBERT NOLAND,	)	<u>6-297</u>
	)	<u>85-1886</u>
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Scott County (No. 31848) - J. Hobart Darbyshire and Linda K. Neuman, Judges.

Respondent appeals from the trial court's ruling denying his application to modify the parties' original dissolution decree and denying his motion to enlarge or amend findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b).
AFFIRMED.

Michael S. Bennett, Davenport, for respondent-appellant.

Mark B. Abbott of Wells, McNally & Bowman, Davenport, for petitioner-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Respondent husband appeals from the trial court's denial of both his application to modify the parties' original dissolution decree and his motion to enlarge or amend findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b). Respondent contends the trial court erred in denying his application and in failing to reduce the amount of his child support obligation as set forth in the original dissolution decree. Respondent asserts that such modification is justified by a substantial change in the parties' financial circumstances. We affirm the judgment of the trial court.

The marriage of the parties was dissolved by decree on January 21, 1982. The dissolution decree incorporated an extensive stipulation and settlement agreement whereby the two children of the parties, currently ages 15 and 12, would reside six months of the year with petitioner and six months a year with respondent. Respondent agreed to pay monthly child support of \$500 to petitioner, whether or not the children were in her custody. Petitioner was not required to pay any child support to respondent at any time. The stipulation and settlement agreement also contained a detailed provision concerning the reduction of child support obligations based on the disparity between petitioner's and respondent's incomes.

At the time of the dissolution decree, respondent was earning \$44,000 a year at John Deere as a manufacturing engineer. Petitioner was earning \$8,600 a year as a partner in a sewing business. Respondent's employment was terminated with John Deere in October 1984. He received one year's severance pay. Respondent was without employment for three and one-half months. He obtained employment for a brief time at French & Hecht and subsequently at Rock Island Arsenal in May 1985 at an annual salary of \$31,000. Respondent also receives

\$5,400 per year from the Army Reserves. Petitioner's income has increased to \$13,700 per year. Both parties have remarried.

Respondent filed his application for modification of the dissolution decree in May 1985 after obtaining employment at Rock Island Arsenal, seeking a reduction in the child support payments to \$200 per month during the six months the children live with petitioner and seeking elimination of the payments during the six months the children live with him.

Hearing was held August 15, 1985. The trial court denied respondent's application for modification on October 16, 1985. The court found there was substantial bargained-for consideration for the level of child support which the parties agreed respondent would pay; specifically, the trial court found that petitioner received approximately \$117,000 in marital assets and that respondent received approximately \$261,000 in marital assets. The trial court based this finding on the original dissolution decree, stipulation and settlement agreement, and the detailed financial affidavits of the parties at the time of the decree. The trial court further expressed doubt that the decrease in respondent's income was permanent.

Respondent filed a motion to enlarge or amend findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b), alleging that the court's ruling was not supported by substantial evidence on the record. The motion was denied on the basis that the judge who had ruled on the application to modify has resigned, making it impossible for the court to decide respondent's claim.

The question on appeal is whether the trial court erred in denying the application of respondent for reduction of child support from the amount set forth in the dissolution decree. The scope of our review in this equity action is de novo. Iowa R. App. P. 4.

It has been longstanding tradition in Iowa that change of circumstances relied on for the purpose of supporting a petition for modification of a dissolution decree must be material and substantial, not trivial, more or less permanent or continuous, not temporary, and must be such as when not within the knowledge or contemplation of the parties or the court when the decree was entered. Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973); In re Marriage of Brown, 247 N.W.2d 2, 4 (Iowa 1976); Simpkins v. Simpkins, 258 Iowa 87, 90, 137 N.W.2d 621, 622-23 (1965). To justify modification of the child support provisions of a dissolution decree, some material and substantial change, financial or otherwise, since the decree must be shown. Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). The applicant for such modification has the burden of proof by a preponderance of the evidence to demonstrate that there has been a material change in the circumstances necessitating a change in the terms of the decree. Holland v. Holland, 260 Iowa 248, 250, 149 N.W.2d 124, 125 (1967).

Respondent contends the circumstances in 1981 when the stipulation and settlement agreement were entered into by the parties is substantially different from the situation in 1985-86 in three ways: (1) respondent's income has decreased; (2) petitioner's income has increased; and (3) petitioner's monthly living expenses have been reduced when the children are not with her. Respondent's income has decreased from \$44,000 in 1981 to \$31,000 in 1985, although he continues to receive approximately \$5,400 annually from the Army Reserves. Petitioner's income has increased from \$8,600 in 1981 to \$13,700 in 1985. Respondent's third contention is without merit in light of the fact respondent agreed to these terms at the time the original stipulation and settlement agreement was entered into in 1981, and there has been no demonstration of a material change in circumstances to curtail the child support payments to petitioner during the time the children are not living with her.

The appellate court has previously determined that a substantial change in the financial condition or circumstance would not in and of itself justify modification. In re Marriage of Mayer, 347 N.W.2d 681, 683 (Iowa Ct. App. 1984). See Iowa Code § 598.21(8). In view of this determination and in view of the fact that it is obvious from the lengthy provisions concerning child support payments that fluctuations in income were in contemplation of the parties at the time the original stipulation and settlement agreement was entered into, we find that respondent has not carried his burden to show the circumstances which have changed were not within the contemplation of the court when the decree was entered. We affirm the trial court's denial of respondent's application to modify the parties' original dissolution decree.

Because of our holding, we need not address the issue of whether the trial court erred in denying respondent's motion to enlarge or amend findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b), other than to incorporate into this decision that agreement entered into between the parties as evidenced by respondent's motion and petitioner's resistance thereto that respondent is to pay two-thirds of the post-high school educational expenses of the two children and petitioner is to pay one-third of such costs.

AFFIRMED.