FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
JOANNE HILDA GATHMAN AND ALBERT EDWIN GATHMAN

Upon the Petition of)
JOANNE HILDA GATHMAN,)
Petitioner/Cross-Appellant,)
And Concerning)
ALBERT EDWIN GATHMAN,)
Respondent-Appellant.)

Filed August 30, 1983

3-153
2-69168

Appeal from Fayette District Court - Peter Van Metre, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the modification of a provision of the parties' dissolution decree which awarded certain farm property to petitioner subject to a twelve year lease to respondent at a stated amount. AFFIRMED.

R. L. Van Veldhuizen, Oelwein, Iowa, for respondent-appellant.

Patricia A. McGiverin, Waterloo, Iowa, for petitioner/cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

HAYDEN, J.

Respondent-husband appeals and petitioner-wife cross-appeals from the modification of a provision of the parties' dissolution decree which awarded certain farm property to petitioner subject to a twelve-year lease to respondent at a stated amount. Respondent argues that the lease-back provision in the decree was intended as a property settlement rather than support, and therefore, is not subject to modification. Petitioner argues that the modification, which increased respondent's rent payments, was appropriate, but that the increase in rent was insufficient.

The parties' 1977 dissolution decree awarded petitioner 235 acres of farmland (200 acres of which are tillable) subject to a twelve-year lease to respondent for $75 per tillable acre. Although the fair rental value was $100 per tillable acre, respondent was responsible for paying off the mortgage on the 235 acre tract. the decree provided that "if the fair rental rate herein provided is at material variance with the 'going' rate for equivalent land in that area, the same may be adjusted by modification order upon application . . . by either party." The decree was amended in 1978. the amended decree placed the obligation for paying the mortgage indebtedness on petitioner, and increased respondent's rent to $100 per tillable acre. In all other respects the decree remained unchanged.

In 1981, petitioner filed an application for modification of the decree alleging that her income from the lease-back provision was insufficient to support her. She alleged that substantial changes in circumstances had occurred, "including but not limited to" a substantial raise in the fair rental value of the property, an increase in the interest rate on the variable rate mortgage, her deteriorating health, and inflation. At trial, petitioner introduced evidence concerning her income and the effect of inflation. Judge Elwood, who entered the original decree, testified that he ordered the lease-back arrangement incontemplation that the rent paid to petitioner would form the basis of her income, but stated that he

intended it as part of the property settlement rather than alimony. Conflicting evidence was presented concerning the present fair rental value of the property, with estimates ranging from $115 per tillable acre to $150 per tillable acre. The trial court found that the lease-back arrangement constituted alimony, and modified the decree to increase respondent's rent payments to $135 per tillable acre.

Respondent argues that the trial court in this modification proceeding erred in finding the lease-back arrangement to be alimony. We do not agree. We are not persuaded by the trial judge's, in the original dissolution, characterization of the arrangement as part of the property settlement. "It is not what the arrangement is called but what it is that fixes its legal status. It is the substance not the form which is controlling." In re Marriage of Woodward, 229 N.W.2d 274, 278 (Iowa 1975).

The terms "alimony" and "property settlement" have separate and distinct meanings. A property settlement is an award which stems from each spouse's right to an equitable share of property which has been jointly accumulated during the course of the marriage. Alimony, on the other hand, is an award which stems from the common law right to spousal support. Its primary purpose is to provide support for the party to whom it has been awarded. To determine whether a particular award is alimony or property settlement, we must ascertain whether the award has more of the characteristics of one than the other. See Knipfer v. Knipfer, 144 N.W.2d 140, 144 (Iowa 1966).

We are of the opinion that the lease-back arrangement ordered in the original decree has more of the characteristics of alimony than of a property settlement. The trial court which rendered the decree intended the lease-back to provide support for petitioner for the majority of her remaining life. Moreover, we do not find that this arrangement was entered into in lieu of any of petitioner's rights in the parties' marital property. See Knipfer, 144 N.W.2d at 144. Indeed, an examination of the property division ordered by the trial court indicates that it was an equitable one as between these parties.

Subsequent changes may be made in the support provisions of a divorce decree upon a showing by the party seeking modification that there has been a material and substantial change in circumstances since the date of the original decree which was not within the contemplation of the trial court at that time. See Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). Petitioner has met her burden here. The material changes she alleges in support of her petition for modification include an increase of 4% in the mortgage interest rate on her encumbered property as well as the general effects of inflation. Petitioner argues that the rental income provided in the original decree is insufficient for her support, and that her basic annual expenses now exceed that income by over $7,000. The supreme court has noted that inflation may be considered a material and substantial change in circumstances for purposes of justifying a modification of support provisions. Mears v. Mears, 213 N.W.2d 511, 519 (Iowa 1973); Dworak v. Dworak, 195 N.W.2d at 742; see also Wells v. Wells, 168 N.W.2d 54, 61-62 (Iowa 1969). We note that there is no indication that the trial court contemplated an increase in petitioner's mortgage interest rate, since at the time the decree was issued the property was subject to a fixed rate mortgage.

As an alternative ground for upholding the trial court's modification we point out that the original decree specifically provides that the lease-back arrangement can be adjusted by modification order upon application of either party if it can be shown that the rent ordered in the decree is at material variance with the going rental rate. We are not persuaded by respondent's assertion that the 1978 amendment to the decree served to delete the provision for rent adjustment. That amendment, which increased respondent's rent obligation from $75 per acre to $100 per acre, and shifted responsibility for paying the mortgage indebtedness to petitioner, specifically provided that in all other respects, the lease-back provision of the original decree "shall remain as originally decreed."

Both petitioner and respondent cite error in the trial court's determination of the fair rental value of petitioner's land. Petitioner argues that the court should have found that the fair rental value is $140 per tillable acre, rather than $135. Respondent argues that the fair rental value is closer to $115 per tillable acre. Upon review of all of the evidence, we conclude that the trial court correctly determined that the fair rental value of petitioner's property is $135 per tillable acre. The trial court's judgment is therefore affirmed.

AFFIRMED.