

FILED

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IN THE COURT OF APPEALS OF IOWA SUPREME COURT

IN RE THE MARRIAGE OF MARTHA M. COOK AND ROBERT H. COOK

Upon the Petition of)

MARTHA M. COOK,)

Filed October 18, 1979

Petitioner-Appellee,)

And Concerning)

ROBERT H. COOK,)

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2-62613

Respondent-Appellant.)

Appeal from Cerro Gordo District Court - B. C. Sullivan, Judge.

Respondent-husband appeals and petitioner-wife cross appeals from judgment denying modification of alimony award of dissolution decree. - Affirmed.

James P. McGuire, Mason City, for respondent-appellant.

Don W. Burington, of Laird, Burington, Bovard, Heiny & McManigal, Mason City, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-husband appeals from a judgment denying his application for modification of the alimony award provisions of the dissolution decree, seeking a reduction in the amount of alimony he is required to pay. Petitioner-wife cross appeals seeking an increase in her alimony award. We affirm the judgment of the trial court denying the modification applications.

The parties' marriage was dissolved by decree on June 23, 1971, and that decree was affirmed on appeal. In re Marriage of Cook, 205 N.W.2d 682, 686 (Iowa 1973). The decree required respondent to pay alimony in the amount of \$600 per month to petitioner. In the summer of 1976, respondent's employment was terminated and he sought a modification of the alimony award in light of his reduced income. Petitioner also applied for modification, seeking an increase in alimony to compensate for inflationary increases in the cost of living. The court denied the applications on May 11, 1977, stating that respondent's loss of income was more likely to be temporary than permanent and that inflation alone was not a sufficient cause to warrant granting petitioner's request for increased alimony. On April 25, 1978, respondent and petitioner again applied for modification, asserting respectively that respondent's "temporary" unemployment had now become permanent, and petitioner's need for increased alimony due to the demands of inflation was even more significant now.

Our review is de novo. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977); Iowa R. App. P. 4. While we are not bound by the fact findings of the trial court, we give them weight. Iowa R. App. P. 14(f)(7).

The party seeking modification of alimony provisions must prove by a preponderance of the evidence that there has been a material and substantial change in circumstances since the date of the original decree or any subsequent intervening proceeding that considered modification of the alimony provision, and that such changed circumstances must not have been within the contemplation of the trial court at the time of the prior proceeding. Full, 255 N.W.2d at 159; In re Marriage of Jensen, 251 N.W.2d 252, 253-54 (Iowa 1977). Modification is not desirable unless enforcement of the decree will be attended by positive wrong or injustice as a consequence of changed conditions. Ellis v. Ellis, 262 N.W.2d 265 (Iowa 1978); In re Marriage of Glass, 213

N.W.2d 668, 671 (Iowa 1973) (quoting Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973)).

Respondent asserts that his decreased income due to his employment termination in 1976, which the trial court characterized as "temporary" when he first applied for modification, has now become permanent, thus constituting a change of circumstances that justifies a decrease in his alimony obligations. However, respondent testified that approximately two weeks prior to the hearing on this modification application, he commenced employment with a real estate business as a salesman. Thus, it is obvious that respondent's contention that his condition of unemployment is now permanent rather than temporary is without merit. Furthermore, when asked how his financial situation had changed since the prior proceedings on his prior modification application, respondent testified that he did not think there had been any substantial change. Respondent has clearly not proved a material and substantial change of circumstances since the prior modification hearing by a preponderance of the evidence. Consequently, we affirm the trial court's denial of his application for modification.

Petitioner's only contention in support of her application for modification, seeking an increase in alimony, is that the inflationary increase in the cost of living justifies an increase. While an appellate court can take judicial notice of the effects of inflation in the context of reviewing the economic provisions of a dissolution decree, Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974); Mears v. Mears, 213 N.W.2d 511, 519 (Iowa 1973), we cannot conclude that respondent is as impervious to the effects of inflation as petitioner contends she is susceptible. Since inflation has changed the circumstance of respondent's ability to pay just as it has changed the circumstance of petitioner's need, we cannot conclude, under the facts of this case, that the effects of inflation by themselves are sufficient to warrant an increase in petitioner's alimony award. Therefore, we affirm the trial court's denial of petitioner's application for modification.

Costs on appeal are taxed equally to both parties.

AFFIRMED.