

IN THE COURT OF APPEALS OF IOWA

No. 1-426 / 90-1731

FILED

DEC 31 1991

CLERK SUPREME COURT

IN RE THE MARRIAGE OF ROBERT WILLIAM VAN SANT AND
MARILYN JEAN VAN SANT

Upon the Petition of

ROBERT WILLIAM VAN SANT,

647

Appellee,

And Concerning

MARILYN JEAN VAN SANT,

Appellant.

Appeal from the Iowa District Court for Scott County,
John Nahra, Judge.

Appellant challenges the district court's refusal to
modify the parties' dissolution decree. Appellant contends
her alimony should be increased to \$10,000 per month.
AFFIRMED.

George Lindeman and John A. Stitely of Lindeman &
Yagla, Waterloo, for appellant.

Thomas J. Shields of Lane & Waterman, Davenport, for
appellee.

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

DONIELSON, J.

William and Marilyn Van Sant were married on March 15, 1957. The trial court dissolved their marriage on May 29, 1981. Under the terms of the decree, William was ordered to pay Marilyn \$3,050 per month in alimony.

On May 4, 1989, Marilyn filed an application to modify the parties' decree and requested that her award of alimony be increased to \$10,000 per month. She argued that the combination of Robert's increased income and her deteriorating health constitutes a substantial change in the parties' circumstances since entry of the original decree. The court concluded that there had not been a substantial change in circumstances warranting an increase in alimony. Marilyn appeals.

Over the course of the parties' marriage, William had risen to the rank of vice president at John Deere & Co. In that position, he earned an annual adjusted gross income of \$143,000. After the decree was entered, William left John Deere to become president and chief operating officer of Cessna Aircraft Company. He is currently the president and chief operating officer for Blount, Inc. His adjusted gross income reached a high of \$1,246,276 in 1986. However, this figure reflected the purchase of Cessna Aircraft Company by General Dynamics, resulting in a stock buy-out from which Robert, as a stockholder, benefited. At trial, Robert's annual base salary at Blount was

approximately \$400,000. He has twice received annual bonuses equaling \$450,000.

In 1981 Robert claimed a negative net worth. However, by 1990 he owned a \$100,000 equity in a \$680,000 home, an unencumbered 1983 Mercedes, \$9,000 in stock, \$25,000 in bank accounts, and \$457,500 in personal property. He also had approximately \$100,000 vested in a profit sharing account.

Marilyn testified that, since entry of the original decree, she has been diagnosed with a terminal degenerative disease, primary biliary cirrhosis of the liver. She had, however, been under a doctor's treatment and had sought diagnostic evaluations at the Mayo Clinic prior to the dissolution. Other than her own testimony, Marilyn offered no evidence in support of the diagnosis, complications, or impairments.

Marilyn has a net worth of approximately \$100,000. She has a bachelors degree in financial management from the University of Northern Iowa, yet she is unemployed. The trial court found that Marilyn has failed to actively seek employment. She claims to be physically capable of working only half-time. However, she testified that no physician had advised her that she should curtail or forego any of her activities, including employment, due to her condition. Indeed, Marilyn's condition has not prevented her from pursuing and obtaining a college degree, working full-time, traveling to London for a personal vacation,

spending two weeks in Jamaica working in a medical clinic under very primitive conditions, or teaching Bible school in Canada.

The trial court, after finding Marilyn's listed expenses to be at best inflated, determined her annual expenses to be \$37,968 and her income to be \$39,423. Marilyn claims her health insurance premiums are \$462 per month and are increasing at a rate of more than twenty-five percent per year.

William has remarried; Marilyn has not. The parties' three children are adults and are not affected by this controversy.

We believe Marilyn has failed "to show that the parties' circumstances today are not as they would have been envisioned by the trial court when the dissolution was granted." See In re Marriage of Skiles, 419 N.W.2d 586, 589 (Iowa App. 1987). Accordingly, we affirm the trial court's refusal to modify the decree.

I. Scope of Review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Modification of Alimony Provisions. Modification of the alimony provisions of a dissolution decree is justified only if there has been some material and substantial change in the circumstances of the parties, financially or otherwise, making it equitable that other terms be imposed. Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa App. 1979); Iowa Code § 598.21(8) (1989 Supp.). Section 598.21(8) provides in relevant part:

In determining whether there is a substantial change in circumstances, the court shall consider the following:

- a. Changes in the employment, earning capacity, income or resources of a party.
- b. Receipt by a party of an inheritance, pension or other gift.
- c. Changes in the medical expenses of a party.
- d. Changes in the physical or emotional health of a party.
- e. Changes in the residence of a party.
- g. Remarriage of a party.
- h. Possible support of a party by another person.
- i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.
- j. Contempt by a party of existing orders of Court.
- k. Other factors the court determines to be relevant in an individual case.

The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of the evidence. Mears v. Mears, 213 N.W.2d 511, 513 (Iowa 1973); Thayer, 286 N.W.2d at 223. Furthermore, not every change in circumstances constitutes a sufficient basis for modification. In re Marriage of Vetterneck, 334 N.W.2d 761, 762 (Iowa 1983); Simpkins v. Simpkins, 258 Iowa 87, 90, 147 N.W.2d 621, 623 (1965). Changes must be more or

less permanent or continuous, not temporary. In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983).

Additionally, the provisions in a decree are final as to the circumstances then existing. See Mears, 213 N.W.2d at 515. The "then existing" circumstances are those which were known or, through reasonable diligence, should have been known to the court when the original decree was entered. Harwell v. Harwell, 253 Iowa 413, 417, 112 N.W.2d 868, 871 (1962). A trial court may not modify the provisions of a decree simply on the ground that they were originally inequitable; but rather, relief from an inequitable provision may be effected only by appeal. See Smith v. Smith, 257 Iowa 584, 591-92, 133 N.W.2d 677, 681 (1965). "Any other procedure would leave the matter open to the most undesirable result of endless litigation and continual uncertainty." Simpkins v. Simpkins, 256 Iowa 989, 992, 129 N.W.2d 725, 725 (1964).

Therefore, the petitioner must show by a preponderance of the evidence that the change in circumstances could not reasonably have been within the contemplation of the trial court at the time the original decree was entered. Jensen v. Jensen, 253 Iowa 1013, 1019, 114 N.W.2d 920, 921 (1962). The original decree is entered with a view to reasonable and ordinary changes that may be likely to occur in the relations of the parties. Mears, 213 N.W.2d at 514. Any changes in the circumstances that are "natural

occurrences and as such could be foreseen by the [c]ourt" will not justify modification. Id.

Additionally, in order to warrant modification, "it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice." Vetternack, 334 N.W.2d at 762. "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987)(citing Vetternack, 334 N.W.2d at 762).

We find Marilyn has failed to show that the condition of her health has substantially changed since entry of the original dissolution decree. We believe that Marilyn remains quite able to work. Yet, she has not aggressively searched for employment which would utilize, and compensate her for, her degree in financial management. Neither has Marilyn found it necessary to use her savings to offset any health care costs. Additionally, Marilyn testified that she was attempting to buy a \$96,000 condominium on which she would be obligated to pay \$795 per month, considerably more than her prior rent payments of \$355 per month. We do not believe that enforcement of the original decree will result in a positive wrong or injustice to Marilyn.

Furthermore, we believe Robert's increased income was certainly within the contemplation of the trial court when

the original decree was entered. When the decree was entered, Robert was a corporate vice president. The next logical step in his career was to seek the position of president. High level corporate executives are well paid. Accordingly we affirm the trial court's refusal to modify the alimony provisions of the parties' original dissolution decree.

The costs of this appeal are taxed to Marilyn.

For the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.