FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT R. GAYLORD AND RUTH J. GAYLORD

Upon the Petition of)
ROBERT R. GAYLORD,)
Petitioner-Appellant,) Filed January 24, 1984
And Concerning)
RUTH J. GAYLORD,) 3-439 / 83-751
Respondent-Appellee.)

Appeal from the Iowa District Court for Warren County - M. C. Herrick, Judge.

Petitioner husband appeals from the trial court's denial of his application to modify the decree dissolving the parties' marriage. He asserts (1) that since the decree he has shown a substantial change of circumstances which warrants reducing his alimony and child support obligations, and (2) that the trial court should not have reduced his lien against respondent wife's house to cover his delinquencies in alimony and child support. AFFIRMED.

Robert A. Gottschald, Indianola, for petitioner-appellant.

No appearance for respondent-appellee.

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

PER CURIAM

The August 1982 decree dissolving the marriage of petitioner Robert R. Gaylord and respondent Ruth J. Gaylord directed Robert to pay child support of $250 per month per child for two children and alimony of $100 per month. It also awarded Ruth the parties' house and gave Robert a $13,750 lien against the house, payable when his child support obligation ceases.

In November 1982, Robert applied for a modification of the decree; he asked that his child support and alimony obligations be reduced because he had lost his job. Ruth resisted the application for modification and also applied for an order citing Robert for contempt because he was delinquent in his child support and alimony payments. Trial was held on both applications.

The trial court found that Robert had secured a new job and that he had recently been making considerable investments; it concluded that, since the decree, there had not been a substantial change of circumstances which warranted reducing his child support and alimony obligations. The trial court refused to cite Robert for contempt, but it did reduce his lien against the house by $6,000, the amount of the delinquency in child support and alimony.

Robert appeals the trial court's decision. He contends he had shown that, since the original dissolution decree, he had undergone a substantial change in circumstances and thus, a modification in the decree to reduce his alimony and child support obligations was warranted. He also challenges the trial court's action in reducing his lien against the house and asks that attorney's fees for this appeal be charged against Ruth.

Our review is de novo. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). The court has the power to modify child support only when there has been a material and substantial change in circumstances since the date of the original decree. Mears v. Mears, 213 N.W.2d 511, 514 (Iowa 1973); Iowa Code § 598.21(8) (1981). The proponent of the modification must prove by a preponderance of the

evidence that enforcement of the decree will cause a positive wrong or injustice as a result of a material and substantial change in circumstances. Id. at 515; Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973). The changed circumstances relied upon must be such as were not within the knowledge or contemplation of the court when the decree was entered and must be of a permanent or continuous nature. Mears at 515. Furthermore, where a change of financial condition of one or both parties is relied upon as a basis for modification of child support provisions, the change must be substantial. Spaulding at 635.

In the instant case, Robert has failed to meet these standards. Although his financial situation has changed, we do not find the change to be so substantial as to warrant modification of the original decree. Robert has not proven by a preponderance of the evidence that compliance with the decree would do him an injustice. Furthermore, it is not evident that his current financial slump is permanent. In fact, Robert testified that he believed his income level would increase as he continued in his new employment. Therefore, we uphold the trial court's denial of his request for modification.

The trial court declined to hold Robert in contempt for failing to pay alimony, child support, payments for loans made on the life insurance of the parties' children, and premiums on medical and hospital insurance for the children. Instead, it reduced the amount of the lien he held against Ruth's house by the amount which Robert was in arrears. This gave Robert some present relief from past liabilities, which we find appropriate in light of the apparently nonpermanent nature of his financial difficulties.

AFFIRMED.