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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES H. OMVIG,)

Appellee - Cross Appellant,) Filed September 9, 1977

vs.)

JANICE FLEMING OMVIG,) 159 / 2-58761

Appellant - Cross Appellee.)

Appeal from Polk District Court - A. B. Crouch, Judge.

Appeal from Modification of alimony and child support provisions of dissolution decree. - Affirmed as modified.

Robert C. Oberbillig, of Des Moines, for Appellant and Cross Appellee.

David J. Grace and James L. Sayre, of Des Moines, for Appellee and Cross Appellant.

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

SNELL, J.

Janice Omvig appeals and James Omvig cross-appeals from the trial court's order modifying the parties' dissolution decree pursuant to Janice's application. The trial court increased James' child support obligation for the parties' one child from $100 per month to $40 per week. Alimony was increased from $200 to $220 per month. James was also ordered to pay one half of all the child's medical expenses which are not covered by insurance. On appeal, Janice argues that the increases should have been greater; James argues that no increased benefits should have been awarded at all.

The authority to modify a dissolution decree is found in §598.21, The Code: "Subsequent changes may be made . . . when circumstances render them expedient." The subsequent change of circumstances which is necessary to justify a modification of the original decree is a substantial change, In re Marriage of Glass, 213 N.W.2d 668, 671 (Iowa 1973), and the circumstances which have changed must be those which were not within the contemplation of the trial court at the time it entered the original decree. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974); Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). The provisions for support payments in a divorce decree are final as to circumstances then existing. Holland v. Holland, 260 Iowa 248, 249, 149 N.W.2d 124, 125 (1967).

The burden is on the applicant, Janice, to establish the required change of circumstances by a preponderance of the evidence. Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). Our review is de novo. And, while we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), Rules of Appellate Procedure.

In Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974), the supreme court stated that additional medical expenses, additional costs of education and an increase in earnings are circumstances which are to be taken into consideration when passing upon an application for modification. Also, a court takes into account the inroads which inflation has made upon the purchasing power of the dollar. **Page**, supra; **Dworak**, supra. However, in order to modify child support provisions it must be shown that enforcement of the decree will be attended by positive wrong or injustice as a result of material and substantial change in circumstances. **Mears**, supra at 517.

From a review of the record we find that the trial court was correct in finding a material and substantial change in circumstances. The parties' child, James II, suffers from allergies which necessitated frequent shots and which are not covered by James' insurance. This is not the type of change which the court refused to recognize in **Mears** (orthodontia work). James' income has risen dramatically from $12,600 to $19,800 at the time of the modification hearing. Testimony showed inflation had greatly eroded the purchasing power of the dollar and the consumer price index was properly admitted to establish the same. Hunt v. State, 252 N.W.2d 715, 722 (Iowa 1977). We do not believe, however, that James should be solely responsible for this expense.

Both parties are liable for the support of their children, not necessarily in equal shares but proportionately according to their ability to pay. **Dworak**, supra at 743; McDonald v. McDonald, 183 N.W.2d 186 (Iowa 1971). Additionally, James' present wife, Sharon, is gainfully employed and while she has no obligation to support his son or former wife, it is proper to consider Jame's overall financial condition. **Page**, supra at 558. At the time of the modification, her salary was $11,700 a year.

We find that the trial court's order increasing child support from $100 per month to $40 per week should be increased to $50 per week, payable as ordered in the modified decree. We find there was justification for increasing alimony from $200 to $220 per month based on the factors cited above.

Except as modified, the decision of the trial court is affirmed. Costs on appeal are taxed against the parties equally. AFFIRMED AS MODIFIED.

All judges concur except Donielson, J. who concurs specially.

DONIELSON, J. (specially concurring)

A thorough review of the record in this case convinces me that although there is some basis for modification in accordance with the terms ordered by the trial court, I do not believe that there is any basis for the further increases allowed by the majority here. The trial court was in the best position to evaluate the credibility of the witnesses, and we should give weight to that court's findings. Rule 14(f)(7), Rules of Appellate Procedure. Consistent with the thorough analysis of the trial court, I would affirm the lower court in toto. See Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973).