

IN THE COURT OF APPEALS OF IOWA

No. 2-537 / 92-213

IN RE THE MARRIAGE OF JOHN ERIK EVANS AND
PRISCILLA EVANS

Upon the Petition of
JOHN ERIK EVANS,

Appellee,

And Concerning
PRISCILLA EVANS,

Appellant.

FILED

MAY 25 1993

CLERK SUPREME COURT

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Appeal from the Iowa District Court for Polk County,
Robert E. Hutchison, Judge.

The wife appeals from the district court's refusal to
modify the alimony provision of the parties' dissolution
decree. **AFFIRMED.**

Thomas D. Hanson of Hanson, Bjork & Russell,
Des Moines, for appellant.

William J. Koehn and Patricia A. Shoff of Davis,
Hockenberg, Wine, Brown, Koehn & Shors, P.C., Des Moines,
for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab,
JJ.

SCHLEGEL, J. 000136

John and Priscilla Evans were married in 1949. They were divorced on May 19, 1976. They had three children, two of whom were adults at the time of the dissolution decree. The third child was in college.

In the dissolution decree, Priscilla was awarded the marital residence and ordered to pay the mortgage payments. She was also awarded a car and household goods. John was awarded the parties' joint bank account, his retirement account, a car, and household goods in his possession. John was ordered to pay alimony of \$1,500 per month until Priscilla's remarriage or the death of either party. John was also ordered to maintain a life insurance policy naming Priscilla as the beneficiary. John was ordered to assume all of the parties' debts, except the mortgage, and to pay the college expenses of the child in college.

At the time of the dissolution, John was the president, chairman of the board, and chief executive officer of Allied Mutual Insurance Company. His salary was \$75,000 in 1976, and he had substantial other company benefits. Priscilla had not worked outside the home during the marriage. She had a college degree, but no employment skills.

Priscilla filed an application to modify the decree on October 24, 1990. She claimed there had been a substantial change in circumstances due to John's increased salary and

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that she should be awarded a greater amount of alimony. In his answer, John asked the court to terminate the award of alimony.

John is still the president, chairman of the board, and CEO of Allied Insurance Company. In 1990 his salary was \$679,910. His employment benefits had also increased. John planned to retire sometime after 1992. His retirement account will pay him between \$85,000 to \$95,000 per year. John will also receive income from stock option plans, and he will probably have total income of over \$300,000 per year after he retires.

After the dissolution decree, Priscilla obtained a real estate license. She is a real estate broker with Iowa Realty. In 1990 she earned \$79,849. She also received alimony of \$18,000 and dividends of \$801, for total income of \$104,298. Priscilla planned to retire in 1992 when she became sixty-five years old. The parties stipulated that she will then have income of \$42,520, and net income of about \$2,952 per month.

The district court entered an order on January 21, 1992, denying Priscilla's application for modification. The court found John's salary increases were contemplated by the trial court when the dissolution decree was entered. The court found it was only Priscilla's significant income which had not been contemplated by the trial court. The court also found Priscilla failed to show

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fraud at the time of the original decree. The court denied John's request to terminate his alimony obligation. Priscilla appealed.

This case was heard in equity and our scope of review is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Priscilla contends the district court should have granted her application for modification of the alimony provision in the parties' dissolution decree. She states that while the trial court had contemplated that John would have some increase in income, the scope of his actual increase in income was not contemplated by the court. Priscilla also claims a positive wrong or injustice will occur if the decree is not modified. She points out that she entered the job market at age forty-nine and although she was able to make a good living, she was not able to accumulate a substantial retirement fund.

Pursuant to Iowa Code section 598.21(8) (1991), a court of competent jurisdiction may subsequently modify a decree of dissolution where there has been a substantial change in circumstances. In re Marriage of Feustel, 467 N.W.2d 261, 263 (Iowa 1991). The circumstances which have changed must be those which were not then within the contemplation of

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the court when the decree was entered. Id. A decree is not to be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed conditions. In re Marriage of Dawson, 467 N.W.2d 271, 274 (Iowa 1991). A party must prove by a preponderance of the evidence a substantial change in circumstances. In re Marriage of Bergfeld, 465 N.W.2d 865, 870 (Iowa 1991).

The district court has reasonable discretion in determining if modification of a dissolution decree is warranted. In re Marriage of Shepherd, 429 N.W.2d 145, 147 (Iowa 1988). On appeal, we do not disturb the district court's conclusions unless there has been a failure to do equity. Id.

We agree with the district court's conclusion in this case that John's salary increases were within the contemplation of the trial court at the time the dissolution decree was issued. The dissolution decree noted that John had received substantial increases in income during the marriage. Furthermore, proposed findings of fact submitted by Priscilla's attorney at the time of the dissolution state:

The Court has to be mindful of the fact that should [John] continue in his present capacity it would appear that his salary increases will be substantial.

We conclude Priscilla has failed to meet her burden to prove by a preponderance of the evidence there has been a substantial change in circumstances not contemplated by the

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trial court at the time of the dissolution decree. We affirm the decision of the district court denying her application for modification of the decree. Costs of this appeal are assessed to Priscilla Evans.

AFFIRMED.