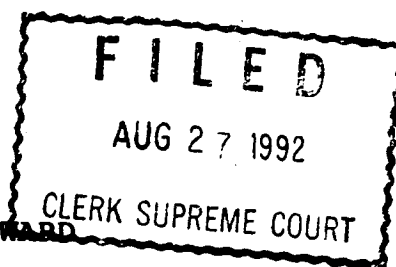


IN THE COURT OF APPEALS OF IOWA

No. 2-036 / 91-746



IN RE THE MARRIAGE OF IVY M. WARD AND THOMAS E. WARD

Upon the Petition of

IVY M. WARD,

Appellee/Cross-Appellant,

And Concerning

THOMAS E. WARD,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County,
Rodney Ryan, Judge.

The district court refused to modify the parties' 1974 dissolution decree. The husband has appealed, contending his alimony obligation should be reduced or eliminated. The wife has cross-appealed; she contends the district court should have awarded her attorney's fees, and she also requests attorney's fees on appeal. **AFFIRMED.**

Timothy McCarthy II of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant/cross-appellee.

Dean Stowers of the Rosenberg Law Firm, Des Moines, for appellee/cross-appellant.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ. Donielson, J., takes no part.

HABHAB, J.

Ivy Ward and Thomas Ward were formerly married to each other. The marriage was dissolved in 1974. The dissolution decree, as modified in 1975, directed Thomas to pay Ivy alimony of \$500 per month until she remarried or either party died.

In 1990 Thomas filed this petition to modify the dissolution decree, asking that his alimony obligation be reduced or eliminated. As changes of circumstance, he alleged that since the 1974 dissolution decree Ivy has obtained a master's degree, has rejoined the work force, and has inherited money from her mother and aunt. He also alleged that his net income from his optometry practice has decreased due to high overhead and tax liens.

After a hearing, the district court declined to modify the dissolution decree. The district court found that in spite of her education, Ivy has had difficulty holding a job and presently grosses only about \$15,000 per year. The district court also found that much of Ivy's inherited property will remain unavailable to her until a trust terminates in 1997. Finally, the district court found that Thomas's optometry practice grossed about \$190,000 per year in 1988 and 1989; the court appeared to suggest that Thomas should practice better management in order to reduce his overhead and improve his profit.

Thomas has appealed from the district court's ruling. He once again argues the dissolution decree should be modified to reduce or eliminate his alimony obligation.

Ivy has cross-appealed. She contends the district court should have awarded her attorney's fees. She also seeks attorney's fees for this appeal.

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetterneck, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetterneck and applied in Kern are applicable here as well:

A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been in the contemplation of the trial court when the original decree was entered.

Vetterneck, 334 N.W.2d at 762.

We affirm the district court. In doing so, we adopt as our own the following findings of fact from the trial court's decree:

10. Since the entry of the final decree herein, Ivy has worked at a succession of jobs. She was able to find work as a teacher following the divorce. She initially went to work in the personnel department of Iowa Methodist, making \$2.70 per hour in 1974. In 1979, she began working as a fund-raiser for the Iowa Methodist Medical Center Foundation, earning approximately \$14,000 per year. She received her Masters Degree in Mass Communication from Drake in 1983. She left Methodist for a similar job at Mercy Hospital, but in January, 1988, Ivy's employment there was terminated.

11. From January, 1988, to January, 1989, Ivy was unemployed, unable to find a job in her field in Des Moines or elsewhere. In January, 1989, Ivy was hired by the American Cancer Society in a public-relations position. She worked there for 3 months, and then was terminated. From March, 1989, until the present, Ivy has worked as a part-time fund raiser at the National Health Agencies of Iowa. In January, 1990, her hours were increased from 20 to 30 hours per week, but she is still classified as a part-time employee, and receives no employee benefits.

12. In order to make ends meet, Ivy started a second job in May, 1990. In addition to her work at the National Health Agencies, she now works 15 hours per week as a babysitter in the Iowa Methodist day care program. She makes \$4.90 per hour, and receives no employee benefits.

13. Ivy's current gross income is approximately \$1,250 per month, or \$15,000 per year. In 1986, Ivy earned \$25,256; in 1987, she earned \$33,604; in 1988, she earned just \$2,721; and in 1989, \$6,700.

14. Since the dissolution, Ivy has received inheritances from the estate of her mother of approximately \$30,000, and also received approximately \$2,400 from her Aunt Ivy's estate and has a future interest in the trust when it terminates in 1997.

Like the trial court, we find circumstances changed since the original dissolution decree, we do not find these changes to be material and substantial. Despite receiving a master's degree and rejoining the work force, at the time of trial Ivy was employed merely part-time. She earned only \$15,000 annually and received no benefits. Due to Ivy's age (she was forty-four years of age at the time of the entry of the dissolution decree in August of 1974), she is unlikely to obtain employment that offers full benefits. Her inheritance will not be of significant value for several years. We form no opinion as to whether modification may be in order in 1997 when she realizes her full interest from her aunt's trust.

The record sufficiently indicates Tom's poor financial situation is not permanent. Moreover, testimony in the record implies this proceeding is part of an effort to turn Tom's financial position around. This need not be done at Ivy's expense.

Ivy cross-appealed, alleging the district court should have awarded her attorney's fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312

N.W.2d 147, 150 (Iowa App. 1981). We affirm the trial court on this issue. We also decline to award attorney's fees on appeal. We assess costs on appeal to the appellant.

AFFIRMED.