



IN THE COURT OF APPEALS OF IOWA

ARDATH B. WYANT,	)	
Appellant,	)	Filed June 24, 1977
v.	)	
BEVERLY U. WYANT, Executor of)		182
the Estate of Harold R. Wyant,)		2-58749
deceased,	)	
Appellee.	)	

Appeal from Woodbury District Court - James P. Kelley, Judge.

Appellant appeals from modification of appellee's alimony obligation. Reversed.

Joe Cosgrove, Yaneff & Cosgrove, of Sioux City, for appellant.

E. A. Hutchison, Hutchison & Hurst, of Sioux City, for appellee.

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

PER CURIAM

Ardath Wyant appeals trial court's modification of her divorce decree by reducing the amount of her alimony payments from Harold Wyant.

Ardath and Harold were divorced in October, 1968. The stipulation entered between the parties provided that Ardath was to receive their family home in Sioux City, some Canadian property used as a summer home and \$750 per month alimony. In return, Harold retained his controlling interest of stock in the closed corporations of E. L. Graham Company, W & J Realty Company, and Silent Drive Incorporated. In the years that followed, Harold's health significantly declined. His several heart attacks and the implantation of pacemakers within him forced his retirement from active management of the corporations. Significant to this appeal, however, his overall income continued to rise in the years 1968-1973. In 1973, Harold filed an application to modify the divorce decree to lower alimony payments to \$325 per month. Shortly before the evidentiary hearing on his application in September, 1975, Harold sold his interest in E. L. Graham Company for \$183,600. After hearing the evidence, trial court modified the decree to provide alimony of \$400 per month for Ardath. Harold died shortly thereafter and the executor of his estate has been substituted on appeal.

Ardath asserts several errors on appeal. Because we find her contention that Harold failed to prove a material and substantial change of circumstances so as to justify modification of alimony payments to be dispositive, we do not pass on her other assigned errors.

In our de novo review, Harold must show a material and substantial change in the parties' circumstances, financial or otherwise, to justify the modification. *Mears v. Mears*, 213

N.W.2d 511, 514-515 (Iowa 1973). While we have carefully weighed the evidence of Harold's failing health, we cannot help but conclude that it had little effect on his income and correspondingly his ability to meet his alimony obligations. *See* Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). In fact, Harold's net worth increased from slightly over \$10,000 in 1968 to over \$180,000 at the time of the modification hearing. Further, Harold's taxable income had also increased commensurate with his net worth, steadily rising from 1968-1973. The fact that some of this taxable income derived from the closed corporations was not paid to Harold but left inside the corporation is not significant given Harold's status as controlling majority stockholder over them. In short, Harold's poor health bore little relationship to his ability to support Ardath. Trial court erred in finding a material and substantial change of circumstance as to justify reduction of alimony payments. Trial court's judgment hereby is reversed.