



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ALLAN L. WELLS AND JOLYN KAY WELLS

Upon the Petition of	)	
ALLAN L. WELLS,	)	Filed January 30, 1981
Petitioner-Appellee,	)	
And Concerning	)	
JOLYN KAY WELLS,	)	0-395
Respondent-Appellant.	)	<u>2-64336</u>

Appeal from Black Hawk District Court - C. W. Antes, Judge.

Respondent wife appeals from trial court order denying her application to modify the child support provisions of the partips' dissolution decree. REVERSED.

Max E. Kirk of Ball & Nagle, P.C., Waterloo, for respondent-appellant.

Terry Diane Parsons of Redfern, McKinley, Olsen & Mason, Cedar Falls, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Respondent Jolyn Wells appeals from the trial court order denying her application to modify the child support provisions of the parties' dissolution decree. We reverse the denial of modification.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4.

I.

The parties' six-year marriage was dissolved in 1977, with the decree awarding custody of the couple's two children to the respondent wife. Petitioner was ordered to pay child support in the amount of \$25 per child per week. The respondent was awarded the parties' house subject to a \$12,900 lien in favor of the petitioner.

In March of 1979, the respondent filed an application to modify the child support provisions of the decree, requesting that the petitioner be required to pay \$50 per child per week. Evidence at trial revealed that since the 1977 decree, the petitioner has advanced from an apprentice electrician with an hourly wage of \$7.86 to a journeyman electrician with an hourly wage of \$13.19. Consequently, his 1978 income was \$25,210, as compared to an income of \$16,349 in 1976. However, the petitioner's income is not entirely predictable because, rather than having a single employer, he works out of a union hall on a variety of construction projects and is sometimes unemployed for long periods of time. Furthermore, the petitioner has remarried and he and his new wife are expecting a child. After the child is born, the wife does not plan to return to work. Her son by a previous marriage lives with the couple and is partially supported by the petitioner. The respondent testified that living expenses for herself and her children have increased from \$691 per month in 1977 to \$1006 per month in 1979. While her gross annual income at the time of the decree was approximately \$5800, her gross income in 1978 was \$8152.

II.

The power of the court to modify child support provisions exists only if there has been shown a material, substantial, and permanent change in circumstances since entry of the decree making it equitable that different terms be fixed. Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978); In re Marriage of Habben, 260 N.W.2d 401, 403 (Iowa 1977); In re Marriage of Jensen, 251 N.W.2d 252, 253-54 (Iowa 1977). A decree should not be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed circumstances. Ellis, 262 N.W.2d at 267. Moreover, the change in

circumstances must not have been within the knowledge or reasonable contemplation of the trial court when it handed down the original decree. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977); Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974); Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). The burden rests on the party seeking modification to establish the necessary change in circumstances by a preponderance of the evidence. Mears, 213 N.W.2d at 515. Our primary and governing concern is the best interests of the children involved. Pucci v. Pucci, 259 Iowa 427, 434, 143 N.W.2d 353, 358 (1966); Sandler v. Sandler, 258 Iowa 84, 86, 137 N.W.2d 591, 592 (1965).

We acknowledge that an \$8861 increase in the petitioner's annual income between 1976 and 1978 constitutes a substantial change in circumstances. Petitioner argues, however, that the respondent has failed to establish by a preponderance of the evidence that this change was either permanent in nature or not reasonably contemplated by the trial court at the time of the decree. He bases this contention on the fact that although he earned \$25,210 as a journeyman electrician in 1978, it is uncertain that he will be able to attain that level of income each year because he cannot predict how many days during the year he will work. This uncertainty derives from the fact that he is not employed by a single employer, but instead goes from job to job as employment is provided him through his union hall and consequently is often unemployed for weeks at a time. We find little merit in petitioner's contention and conclude that his financial circumstances have been permanently changed by his advancement from apprentice to journeyman status. Furthermore, we agree with the respondent that the increase in petitioner's income was not contemplated by the trial court at the time it fashioned the decree. The circumstances relied upon for modification "must be such as were not within the knowledge or contemplation of the court when the decree was entered." Warren v. Warren, 191 N.W.2d 659, 661 (Iowa 1971) (quoting Huffman v. Huffman, 176 N.W.2d 859, 861 (Iowa 1971)). It was clearly within the trial court's knowledge that the petitioner desired to advance from the level of apprentice to that of journeyman and that journeymen receive a significantly higher hourly wage than apprentices, since the petitioner testified to these points at trial. However, even though the trial court was apprised of these facts, it is inconceivable that it could have awarded a particular amount of child support based on unascertained future income.

We therefore modify the original decree to require petitioner to pay child support of \$50 per child per week.

REVERSED.