FILED
JUL 2 0 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-674 / 90-726

IN RE THE MARRIAGE OF MARK PAQUETTE and CAROL S. PAQUETTE

Upon the Petition of

87

MARK PAQUETTE,

Appellee,

And Concerning

CAROL S. PAQUETTE,

Appellant.

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge.

The wife appeals the modification of the parties' 1988 dissolution decree, reducing the husband's child support obligation, and requests to be awarded the children as dependents for tax purposes if the husband's reduced support obligation is affirmed. **REVERSED IN PART; AFFIRMED IN PART.**

Marc S. Harding, Des Moines, for appellant.

Henry J. Haugan, West Des Moines, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

Mark and Carol Paquette were formerly married to each other. They are the parents of two children, a boy born in July 1984, and a girl born in February 1987.

The marriage was dissolved in 1988. The dissolution decree directed Mark to pay Carol child support of $300 per month per child, for a total of $600 per month, and $150 per month alimony for two years.

In September 1989, Mark filed a petition to modify the dissolution decree. After a hearing, the trial court reduced Mark's total child support obligation from $600 per month to $455 per month. The trial court calculated the new support figure by applying the Iowa Supreme Court's child support guidelines adopted in October 1989.

The modification court also provided that Mark may claim the children as income tax dependents so long as his child support payments are current.

Carol has appealed the modification order. She challenges the reduction in child support, contending the trial court erred by treating the adoption of the child support guidelines as a change of circumstance justifying a reduction in Mark's obligation. She also contends that if her child support award is to be reduced, she should be allowed to claim the children as dependents for tax purposes.

In this equity action, our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate

anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

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 Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack 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.

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

Additionally, in In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991), the supreme court stated "the child support guidelines now in effect do not - standing alone - constitute a change in circumstances as to a child support order entered pursuant to section 598.21 before October 12, 1989."

Upon our review of the record, we find the trial court did not base the modification on the newly adopted guidelines, however, we do not agree with the trial court that Mark has shown a substantial change in both parties' income, warranting a modification of the original decree.

At the time of the decree, Mark worked approximately sixty hours per week and had a net monthly income of approximately $1,890. At the time of the modification hearing, Mark was working less overtime, but the amount of his hourly wage had increased and he was working another job part-time in addition to his full-time employment. At the time of the hearing, Mark's net monthly income was approximately $1,865.

At the time of the decree, Carol earned a net monthly income of approximately $1,030. At the time of the modification hearing, Carol was earning a net monthly income of approximately $1,258, but the employment was less stable than her employment at the time of the decree.

Child support obligations should be based upon a forty-hour work week, not a work week including overtime. Individuals should not be ordered to work more than a

full-time job in order to meet their support obligations. Even though we disagree with the original decree's child support obligation being based upon Mark's income from working sixty hours per week, the time for appealing that child support obligation has passed. At this point in time, Mark's obligation may be changed only if he shows a substantial change of circumstances from the those at the time the original decree was entered. Mears v. Mears, 213 N.W.2d at 514-15.

We do not find the parties' changed incomes substantial enough to warrant modification of the decree's child support obligation. Mark earned $8.90 per hour at the time the dissolution decree was entered. Mark currently earns $9.40 per hour. The record shows Mark can at least work forty hours per week. Slight increases or decreases in the parties' net monthly income do not equal a substantial change in financial conditions and such changes would be within the contemplation of the trial court when the original decree was entered. Additionally, Carol's income has not increased significantly and Mark's hourly wage has also increased. Consequently, we reverse the trial court's order modifying the original decree with respect to Mark's child support obligation.

Carol requested we award her both children as dependents for tax purposes if we affirmed the trial court's modification order decreasing Mark's child support obligation. Because we have reversed the order decreasing

Mark's support obligation, we decline to alter the trial court's order awarding Mark both children as dependents for tax purposes, as long as he remains current with his support payments the first of each year.

The costs of this appeal are taxed to Mark.

REVERSED IN PART; AFFIRMED IN PART.