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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BERTHA L. ANDERSON
AND ALBERT LEE ANDERSON

Upon the Petition of	)	
BERTHA L. ANDERSON,	)	
Petitioner-Appellee,	)	Filed March 9, 1988
And Concerning	)	7-596 87-347
ALBERT LEE ANDERSON,	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Polk County (No. 14-7900), Harry Perkins, Judge.

Respondent former husband appeals the denial of his application for modification of the decree dissolving the parties' marriage. **AFFIRMED.**

John P. Dollar of Seery & Dollar, Des Moines, for appellant.

Victoria L. Herring, West Des Moines, for appellee.

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

PER CURIAM

Albert Anderson appeals the denial of his application for modification of the decree dissolving the parties' marriage. He asserts his alimony obligation should have been reduced or eliminated. Bertha Anderson requests attorney fees for this appeal. We affirm.

When the parties' marriage was dissolved in 1978 Albert was ordered to pay Bertha $800 per month for twelve years. He is now seeking a modification because his financial condition has worsened.

To reduce or eliminate the alimony award, Albert has the burden to show there has been a substantial change in circumstances occurring after the entry of the decree. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1977); Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973). Circumstances that have changed, to justify modification of alimony, must be those that were not within the contemplation of the trial court when the original decree was entered. In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). Such changes must be more or less permanent or continuous, not temporary. In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983). We review de novo. Iowa R. App. P. 4.

We conclude Albert has not met his burden to show the changes in his financial condition are permanent. Albert's principal business went bankrupt in 1985. He was the controlling shareholder. He was also the personal guarantor of a stock redemption agreement under which Bertha was receiving $1,634.55 monthly. This payment is no longer received by Bertha since it was discharged in bankruptcy and Albert did not reaffirm it. He reaffirmed the bulk of his debts.

Albert is also the sole owner and shareholder of a number of corporations. These corporations have assets which are available to Albert in satisfying his

personal obligations. He has been selling various assets to maintain his life-style and pay his creditors. He commingles his personal funds with corporate funds. He also owns extensive property which will soon be unencumbered. The mortgage payments on his $400,000 home are current. He is starting a new career in the insurance business and in a six-month period earned $11,000 in commissions. His financial condition is improving since the bankruptcy.

Bertha, on the other hand, is having difficulty paying her bills. Albert has not been making his alimony payments and Bertha's income is insufficient to cover all her expenses. She has also lost the monthly stock redemption income.

We are convinced that Albert's financial difficulties are only temporary. He has not met the burden necessary to have the alimony modified and we affirm the trial court.

Bertha requests attorney fees for this appeal. Appellate attorney fees are not a matter of right but depend on the financial conditions of the parties. In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). Albert has a superior ability to pay and we order him to pay $500 towards Bertha's attorney fees. This amount is limited because Bertha did not submit an affidavit specifying the fees charged. Albert is also ordered to pay the costs of this appeal.

AFFIRMED.