

IN THE COURT OF APPEALS OF IOWA

No. 0-292 / 89-1742

FILED

AUG 30 1990

CLERK SUPREME COURT

IN RE THE MARRIAGE OF RICHARD WAYNE HOWLETTE AND
SHIRLEY LORRAINE HOWLETTE

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Upon the Petition of

RICHARD WAYNE HOWLETTE,

Appellant,

And Concerning

SHIRLEY LORRAINE HOWLETTE,

Appellee.

Appeal from the Iowa District Court for Montgomery
County, Paul H. Sulhoff, Judge.

Appellant appeals the district court's order which
modified the parties' dissolution decree. **AFFIRMED.**

Maynard S. Telpner of Telpner, Smith, Sawatzke &
Ruesch, Council Bluffs, for appellant.

Mark D. Swanson of Swanson & Boeye, Red Oak, for
appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

HABHAB, J.

Appellant Richard Wayne Howlette appeals from the district court's order which modified the parties' dissolution decree. He contends the district court should have terminated his alimony obligation to appellee Shirley Lorraine Howlette or, at minimum, reduced his support obligation by the amount of social security benefits obtained by Shirley. We affirm as modified.

The district court dissolved Richard and Shirley's thirty-four year marriage on October 20, 1987. At that time the court divided the parties' assets and awarded Shirley alimony in the monthly amount of \$1,500, subject to a reduction for any social security benefits Shirley may receive. No child support award was needed because the parties' three children were adults. Ten days after the decree Richard remarried. Shirley has not remarried.

On April 14, 1989, Richard filed his petition to modify the alimony award, alleging that due to the dissolving of his small corporation his income was substantially reduced. After hearing evidence the district court concluded that Richard should continue to pay alimony in the monthly amount of \$1,000, and this amount should be paid until Shirley dies or remarries. The amount was no longer to be reduced by any social security Shirley should receive as had been in the original award. Richard appeals.

To resolve the issues presented by the parties we turn to well-established principles. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). Our goal is to do equity under all of the circumstances.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; its award depends upon the unique circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Alimony has traditionally taken the place of support that would have been provided had the marriage continued. In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989). In making an award of alimony the courts are to consider those factors codified in Iowa Code section 598.21(3). See In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983); In re Marriage of Hayne, 334 N.W.2d 347, 350 (Iowa App. 1983).

Alimony provisions of a dissolution decree may be modified only if there has been some material and substantial change in the circumstances of the parties making it equitable that other terms be imposed upon the parties. In re Marriage of Skiles, 419 N.W.2d 586, 588 (Iowa App. 1987); Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa App. 1979). Those circumstances justifying modification of the alimony provisions must not have been in the contemplation of the trial court when the dissolution decree was entered. In re Marriage of Skiles, 419 N.W.2d at 588; In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). We agree with the trial court that the closing of Richard's corporation, and the resulting decrease in income to Richard because of it, constitutes a substantial change in circumstances which was not contemplated by the trial court when the original decree was entered.

Richard, age 63, is in good health and continues to possess the capacity to pay alimony in the amount awarded. He has remarried and his new spouse is employed which contributes to Richard's financial picture. In the three years prior to the modification proceeding, Richard had gross income in excess of \$100,000. We have no reason to disagree with the district court's assessment that petitioner's lifestyle with his new wife has probably contributed to his expenses and the dissipation of many of the assets he received in the original decree. We agree

with the trial court that alimony should not be terminated. We also agree with the trial court that the alimony payments should be reduced to \$1,000 a month. We affirm in this respect.

Shirley requests attorney fees for this appeal. 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 allow Shirley \$750 as attorney fees on appeal and tax the costs on appeal to Richard.

AFFIRMED.