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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-345 / 92-543

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IN RE THE MARRIAGE OF BERNARD J. GRANDANETTE AND ILA B. GRANDANETTE

Upon the Petition of

BERNARD J. GRANDANETTE,

Appellant,

And Concerning

ILA B. GRANDANETTE,

Appellee.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

Former husband appeals and former wife cross-appeals the district court's refusal to modify the parties' dissolution decree. **AFFIRMED.**

Melio A. Tonini, Des Moines, for appellant.

David L. Brown of Hansen, McClintock & Riley, Des Moines, for appellee.

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

HABHAB, J.

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Ila and Bernard Grandanette were divorced in 1982, after twenty years of marriage. Pursuant to a joint stipulation and agreement, Ila was awarded the matrimonial home, personal property, and a cash settlement. In addition, Bernard was to take out a life insurance policy of $25,000 and name Ila as the beneficiary, provide Ila with health insurance and pay Ila lifetime alimony of $500 per month. Bernard received title on several pieces of property and was given certain personal effects.

Bernard is seventy-one and Ila is sixty-four years of age. Neither of them is currently employed. In April 1991, Bernard filed his petition for a modification of the dissolution decree requesting a termination of his lifetime alimony obligation alleging a substantial change in circumstances. Ila answered and counterclaimed for an increase in alimony payments.

The district court held there had been no material change in the circumstances of either party and left the original decree provisions intact. After the hearing, Bernard moved to reopen the record to put into evidence that his insurance premiums for Ila will increase by $200 per quarter. His motion was denied. Bernard appeals, and Ila cross-appeals. We affirm.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented.

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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 the alimony provisions of a dissolution decree is justified only if there has been some material and substantial change in the circumstances of the parties, financially or otherwise, making it equitable that other terms be imposed. Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa App. 1979). The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of the evidence. Mears v. Mears, 213 N.W.2d 511, 513 (Iowa 1973); Thayer, 286 N.W.2d at 223. Circumstances that have changed, to justify modification of alimony, must be those that were not within 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).

The knowledge of the trial court at the time the award is made is the basis for determining whether there has been a change of circumstances. Full, 255 N.W.2d at 159; Leo v. Leo, 213 N.W.2d 495, 496 (Iowa 1973). The original decree is entered with a view to reasonable and ordinary changes

that may be likely to occur in the relations of the parties. Mears, 213 N.W.2d at 514.

Bernard and Ila both contend the district court erred in finding that there had not been a substantial change in circumstances since their dissolution decree was entered. Bernard contends that his alimony obligations should be eliminated because his monthly income was reduced by his retirement. Bernard also claims the district court erred in refusing to reopen the record to allow him to show his medical insurance premiums on Ila have increased by $200 per quarter. Ila contends Bernard's alimony obligation should be increased to $750 a month because of her reduction in investment income and her increase in medical expenses, property taxes and insurance costs. Having carefully considered the record, we conclude the district court properly denied Bernard's petition and Ila's cross-petition to modify the alimony provision of parties' dissolution decree.

The stipulation the parties entered into on October 20, 1982, stated Bernard would pay to Ila $500 per month as alimony, "during the lifetime of Respondent [Ila] or until she remarries." At the time the dissolution decree was entered, Ila had not worked outside the home since her marriage to Bernard. She had no source of support other than her investment income and the alimony Bernard was ordered to pay. The court noted at the time that Ila was in "frail health" with a "deteriorating eye condition."

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Because of Ila's poor health, the district court ordered Bernard to pay medical insurance coverage for Ila.

We find that these statements in the original decree reveal the district court considered Ila's lifetime medical needs, as well as the possibility that her limited sources of income could decrease. We also conclude the district court considered that Bernard could retire during the course of his support obligation. Despite Bernard's protest to the contrary, we find that his financial condition allows him to continue to pay support. Bernard continues to have income from annuities and investments, as well as other substantial assets. We find that neither party has shown by a preponderance of the evidence a substantial change that was not contemplated by the trial court when the original decree was entered. Mears, 213 N.W.2d at 513; Full, 255 N.W.2d at 159.

Bernard next claims the district court should have reopened the record to allow him to present additional evidence. It is well settled that an appellate court will not interfere with a ruling refusing to reopen the record unless there is a clear abuse of discretion. Crane v. Cedar Rapids & Iowa City Ry., 160 N.W.2d 838, 846 (Iowa 1968), aff'd on other grounds, 395 U.S. 164, 89 S. Ct. 1706, 23 L. Ed. 2d 176 (1969). Bernard has failed to show any abuse of the district court's discretion, and we affirm the court on this issue.

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Ila requests attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). 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). Ila had to defend this action on appeal, and Bernard had to defend the cross-appeal. We conclude each party should pay his/her own attorney fees and assess court costs on appeal one-half to each party.

The decision of the district court is affirmed in all respects.

AFFIRMED.