

IN THE COURT OF APPEALS OF IOWA SUPREME COURT

IN RE THE MARRIAGE OF MARIANNE BLESS AND JOHN RAY BLESS

Upon the Petition of	)	
MARIANNE BLESS,	)	Filed September 23, 1980
Petitioner-Appellee,	)	
And Concerning	)	
JOHN RAY BLESS,	)	0-271
	)	<u>2-64349</u>
Respondent-Appellant.	)	

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Respondent husband appeals from denial of modification of support provisions of the parties' dissolution decree. - REVERSED.

William R. King, of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for respondent-appellant.

F. H. Becker, of Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, Des Moines, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent husband appeals from trial court's refusal to modify support provisions of the parties' dissolution decree. We reverse.

I.

Marianne Bliss, petitioner, filed petition for dissolution in 1977. At that time Mr. Bliss operated his own business and received income in the area of \$20,000 annually. Thereafter for legitimate health and business economic reasons, Mr. Bliss sold the company and sought other employment or business opportunity. By the time of the dissolution hearing on March 4, 1978, Bliss had made several employment contacts, but had no position, principally because of the inadequate compensation offered. The court heard testimony that the job and compensation offers fell within the range of \$9000 - \$15,000 but found that Mr. Bliss "can and should continue" the \$20,000 yearly earning level and ordered child support payments and alimony totaling \$1050 per month. The decree was filed on May 4, 1979. Respondent's subsequent motion to reconsider the award of support and alimony was overruled June 19, 1979. Respondent did not appeal from this order. On July 23, 1979, respondent filed his petition for modification, alleging a material change of circumstances arising from recent employment as a teacher at A.I.B. His income at that position started at \$12,000 per year. Mr. Bliss asserted that this was substantially and materially different from the income level anticipated by the court at the time of the decree. Following a hearing on September 17, 1979, the court found no substantial change in circumstances and in particular no long-range and permanent change since the decree. In its order dismissing respondent's application, trial court stated: "The only change of circumstances that was not considered by the Court when the original Decree was entered herein would be the fact of remarriage on the part of the Respondent." Respondent appeals from this order.

Our review of this appeal is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While weight is given to the findings of the trial court, we will not abdicate our function as triers de novo on appeal. Id.; In re Marriage of Locke, 246 N.W.2d 246, 249 (Iowa 1976).

II.

To justify modification of child support or alimony, there must have been a

material change of circumstances since the decree that requires revision of the decree's provision. In re Marriage of Jensen, 251 N.W.2d 252, 253-54 (Iowa 1977); In re Glass's Marriage, 213 N.W.2d 668, 670 (Iowa 1973). The changes must be permanent in nature and not within trial court's contemplation in the original decree. Furthermore, "a decree will not be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed conditions." Glass, 213 N.W.2d at 678 (quoting Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1975)). We consider the circumstances as of the date of the modification hearing. In re Marriage of Dawkins, 285 N.W.2d 8, 9 (Iowa 1979).

The trial court concluded that the respondent had failed to show a change in circumstances sufficient to justify modification because at the time of the dissolution, the court was apprised of respondent's unemployment, his search for employment, and job offers made to him for less than satisfactory remuneration. The offers were in the same price range as the job respondent now holds, and the possibility of income below the \$20,000 figure was contemplated by the court when it ordered the level of support. After a careful review of the evidence that was before the court at the September 17, 1979, hearing, we conclude respondent's deflated employment income does represent a sufficient permanent change of circumstances to warrant modification of his support and alimony obligations. There is a vast difference between the possibility of finding a job that pays \$20,000 per year and the reality of having found a job that pays only \$12,000 per year. The record amply reflects respondent's good faith, though futile, efforts to secure employment paying near \$20,000. This inability entitles him to some relief from the now onerous burdens imposed by the terms of the original decree. It is incredible to require respondent to pay \$1050 per month in support and alimony based on a hypothetical income when in fact his monthly net income is only \$750. This is true even though respondent may have been guilty of misconduct and even though he arguably should have appealed these provisions at the time the decree was granted. Balancing petitioner's needs of approximately \$1500 per month against respondent's ability to pay, we conclude that respondent's financial obligations under the decree should be reduced to \$650 per month, comprising \$50 in alimony and \$600 in child support.

We recognize that this case represents a unique factual situation attributable to the unusual economic circumstances of the present day. Should the economic position

of this respondent improve in the future, further modification of the provisions of the decree would be appropriate. At the present, however, we consider \$650 per month to be a fair and equitable figure.

REVERSED.

Oxberger, C.J., and Carter, J., dissent.