IN RE THE MARRIAGE OF BETTY LOU COOK
AND DANIEL WESLEY COOK

FILED
AUG 2 4 1988
CLERK SUPREME COURT

Upon the Petition of)
BETTY LOU COOK, n/k/a
BETTY LOU LAWYER,)

Petitioner-Appellant,)

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And Concerning)
DANIEL WESLEY COOK,)

8-199
87-701

Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County (No. 15-2650) - Glen M. McGee, Judge.

Petitioner appeals a modification of the decree dissolving the parties' marriage. **REVERSED.**

Thomas J. Anderson, of McMartin & Anderson, Harlan, for petitioner-appellant.

Richard D. Crowl, of Porter, Tauke & O'Brien, Council Bluffs, for the respondent-appellee.

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

OXBERGER, C.J.

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Betty Lawyer appeals a modification of the decree dissolving the parties' marriage. She contends that there is not a substantial change in circumstances to warrant a modification to the dissolution decree ordering her to pay child support. We reverse.

The parties' marriage was dissolved by decree on March 1, 1979. The court awarded custody of the five children to the father, Daniel Cook. The court did not order Betty to pay child support. Daniel made application to modify the dissolution decree on February 17, 1987, asking the court to award him child support for two minor children still under his care and living at home. He stated that both children are now in high school, their expenses have increased, one is planning on attending college, and that he has had a reduction in his wages of four percent. He states he cannot afford to care for them adequately at the present time without support from their mother.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially where the credibility of the witnesses is concerned, but we are not bound by them. Iowa R. App. P. 14(f)(7). The district court has the discretion to modify its orders concerning the support and welfare of the children of the dissolved marriage when there is a substantial change in circumstances. Iowa Code 598.21(8).

The trial court said:

> The court finds that it is unconscionable that the petitioner has not been providing some regular child support for her two children, considering that she and her husband have enjoyed a combined income of between $45,000 and $52,000. There is a sufficient change of circumstances not contemplated at the time of the dissolution, as set out above, that the decree must be modified.

In Holland v. Holland, 260 Iowa 248, 149 N.W.2d 124 (Iowa 1967), the supreme court held that the usual test for modification applies in circumstances where the original decree does not require one parent to pay child support. The court said:

> To justify modification of a child support provision some material change must be shown in the circumstances of the parties, financially or otherwise, making it equitable that other or different terms be imposed.

The new husband's income is not a basis for calculating Betty's ability to pay. His income may only be considered in determining Betty's overall financial condition. See In re Marriage of Mueller, 400 N.W.2d 86, 88 (Iowa App. 1986). See also Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974).

Therefore, we examine Betty's income presently and at the time of the original decree. The original decree is silent regarding Betty's income. The appellee did not favor us with a brief. The appellant's brief doesn't address the question of what Betty's income was at the

time of the original decree. We conclude that Betty's income has not improved since the time of the original decree.

The trial court found Daniel had a four percent (4%) cut in pay in 1986. We do not find this sum to be a substantial change in circumstance. Nor do we find that usual increases in expenses due to increase in ages of the children constitutes a substantial change in circumstances not contemplated by the original trial court. Therefore, the trial court was in error in modifying the decree to provide for child support for Anthony and Julie in the amount of $300 per month.

We find that Betty should be required to pay one-half of the cost of college expenses until Julie is completed with college or is twenty-two years of age. The payments shall commence September 1, 1987, in the amount of $210 per month.

REVERSED.

Schlegel, J. concurs; Sackett, J. dissents.

I dissent. I would affirm the trial court.