IN THE COURT OF APPEALS OF IOWA

No. 1-060 / 90-582

FILED
JUL 26 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF STEVEN L. UDELHOFEN AND JANET M. UDELHOFEN

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Upon the Petition of

STEVEN L. UDELHOFEN,

Appellant,

And Concerning

JANET M. UDELHOFEN,

Appellee.

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge.

Husband appeals district court's refusal to modify alimony and child support. **AFFIRMED AS MODIFIED.**

Steven L. Udelhofen of Hoffmann, Udelhofen & Linquist, Des Moines, for appellant.

Kenneth W. Rittgers, Des Moines, for appellee.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

PER CURIAM

The appellant, Steven Udelhofen, appeals the trial court's ruling that declined to modify the parties' dissolution decree as it relates to alimony and appeals the amount of child support, alleging the amount awarded is not consistent with Uniform Child Support Guidelines. We affirm as modified.

Steven and Janet Udelhofen were married in 1978. They have one child, a boy born in September 1979. The marriage was dissolved in 1986. The dissolution decree initially placed the child in Janet's physical care. The decree also directed Steven to pay Janet child support of $1,000 per month and alimony of $2,000 per month.

In 1987, Steven sought to modify the decree by transferring the child's physical care to him. The district court declined to modify. However, on appeal the Iowa Court of Appeals modified the decree to transfer the child to Steven's physical care. Upon further review the Iowa Supreme Court upheld this custody ruling. The appellate decision was silent on the subject of Janet's possible obligation to pay child support.

In 1989, Steven filed the present petition, once again seeking a modification of the dissolution decree. He requests a reduction in alimony obligations. He also asks that Janet be required to pay child support for their child who he now has in his custody.

The district court declined to modify Steven's alimony obligation. The district court did, however, require Janet to pay Steven child support of $434 per month. The district court reached this amount by applying the child support guidelines to Janet's income of $41,500 per year, which includes the $24,000 in alimony payments. From this amount, the trial court then determined her net income as $2,583 per month. Janet, on appeal, does not challenge this figure.

Steven contends his alimony obligation should be eliminated. He asserts, among other things, that his income from the private practice of law has dropped from around $200,000 per year to around $100,000 per year. He also notes his remarriage, his financial support of several stepchildren, his debt load from a business venture, and Janet's alleged ability to earn more than she presently earns. Steven also contends that Janet should be required to pay him a larger child support award in the event her alimony award is left intact.

Janet requests attorney's fees of $1,300 on appeal.

I. **Alimony.** We first address Steven's contention that he should not be required to pay alimony or, in the alternative, there should be a reduction in alimony. He contends certain changes have occurred in his financial situation which would justify the modification of alimony.

Our established law requires material changes, unanticipated when the decree is entered, which will be of

a permanent nature. In re Marriage of Skiles, 419 N.W.2d 586, 588 (Iowa App. 1987). As it relates to Steven's income, the trial court made the following findings which, from our de novo review of the record, are consistent with the evidence:

Gross Income Per Year	Pre-Tax Net	After Tax Per Year	After Tax Per Month
1985-$153,749	$ 86,760	$ 81,952	$ 6,829
1986- 177,108	94,881	80,545	6,712
1987- 268,767	183,565	149,987	12,499
1988- 214,083	115,996	105,378	8,782
1989[1]-209,209	99,265	90,230	7,519

Steven now anticipates income reductions which may or may not materialize. As the trial court found, the practice of law produces fluctuating income. From the figures before us, his 1989 income is greater than his 1986 income. From this information, his income has not materially changed, regardless of the comparisons advanced by him.

Steven also relies on the changes in his family situation to support a modification. We find this to be unpersuasive. The fact that Steven's family responsibilities have become more burdensome because of his remarriage does not rise to the level of a change in circumstances. His remarriage was voluntary and cannot be used as a basis to reduce his alimony. In re Marriage of Vetternack, 334 N.W.2d 761, 763 (Iowa 1983).

Steven additionally contends he misunderstood the situation regarding the stipulation providing for alimony prior to the entering of the decree. We reject this

1. This was an eleven-month projection.

reasoning. The provisions of the decree are clear and unambiguous. If fraud or other unlawful measures were employed to secure the decree, there are legal measures available to raise those issues.

II. **Child Support.** The trial court ordered that Janet pay $434 dollars per month in child support. She does not challenge this amount on appeal. Steven contends the amount should be higher. We agree with the trial court's determination with regard to the figure that should be used in determining child support.

In this respect, the trial court applied the correct amount from the guidelines in effect at the time the modification decree was written. However, on appeal, since the modification of the decree that establishes child support is not challenged, we apply the child support guidelines approved by our supreme court in December 1990. *Using those schedules,* we find Janet should be paying $581 dollars per month to Steven in child support. We accordingly modify the decree to that extent and provide that child support payments *accruing on and after* December 31, 1990, should be in the amount of $581 per month. In re Marriage of Bergfeld, 465 N.W.2d 865 (Iowa 1990). Each party shall be responsible for his or her own attorney fees. Costs are assessed 75% to the appellant and 25% to the appellee.

AFFIRMED AS MODIFIED.