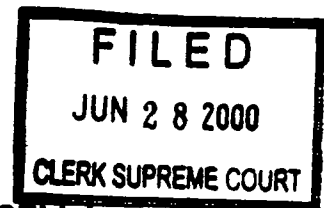


IN THE COURT OF APPEALS OF IOWA

No. 0-162 / 99-0716
Filed June 28, 2000



**IN RE THE MARRIAGE OF BARBARA A. GOODSSELL AND RUSSELL L.
GOODSELL**

Upon the Petition of
BARBARA A. GOODSSELL,
Petitioner-Appellee,

And Concerning
RUSSELL L. GOODSSELL,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Larry Eisenhauer
Judge.

Russell Goodsell appeals an order modifying a dissolution decree, which
reduced his alimony obligation to Barbara from \$1,000 per month to \$500 per
month. **AFFIRMED.**

Kolleen K. Samek, Des Moines, for appellant.

Harlan M. Hockett of Hockett Law Firm, Des Moines, and Joseph G.
Bertogli, Des Moines, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

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VOGEL, P.J.

Russell Goodsell appeals an order modifying a dissolution decree, which reduced his alimony obligation to Barbara Goodsell from \$1,000 to \$500 per month. We find the modification equitable under the circumstances and affirm.

Background facts. The marriage of Russell and Barbara Goodsell was dissolved on February 2, 1993, after thirty-four years. At the time of trial, Russell was fifty-three and Barbara was fifty-two years of age. The dissolution decree ordered Russell to pay Barbara \$1,000 each month in spousal support until Russell reached age sixty-five and retired, the death of either party, or Barbara remarried or cohabited with another adult. On December 1, 1997, Russell was terminated from his employment position with John Morrell for unspecified reasons but received severance pay and available benefits. He later applied for and received unemployment benefits. Russell alleges he has been unable to find another position to provide him with an income. Following Russell's voluntary discontinuation of support payments in March of 1998, Barbara obtained a full-time position with a state correctional facility, increasing her income to approximately \$29,000 per year. Due to these changes in their circumstances, Russell filed an application for modification of decree of dissolution of marriage on March 11, 1998. The trial court decreased his alimony obligation from \$1,000 to \$500 per month. Not content with this decision, Russell appeals.

Scope of review. 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. *Id.*; *Mears v. Mears*, 213 N.W.2d 511, 513 (Iowa 1973). 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.

Even though our review is de novo, we accord the trial court considerable latitude in making this determination. *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987). In divorce cases, the matter of alimony is left largely to the trial court's sound discretion. *McNamara v. McNamara*, 181 N.W.2d 206, 210 (Iowa 1970). We will disturb the ruling only when there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Alimony. Russell contends the trial court erred in refusing to eliminate his alimony obligation to Barbara. At the time of the dissolution, Russell was earning in excess of \$52,000 per year while Barbara was earning approximately \$11,000

per year from two part time jobs. He argues the subsequent loss of his job, his age and his inability to obtain a similar level of employment constitute such substantial and material changes in circumstance as require the court to discontinue his alimony obligation to Barbara. He further alleges Barbara's new full-time job, for which she is earning approximately three times what she was earning at the time of the dissolution, reinforces his contention that alimony is no longer appropriate to their situations, as Barbara is now fully capable of supporting herself.

Barbara has not appealed the district court's reduction of her alimony award from \$1,000 to \$500 per month but seeks only to defend the decision and requests appellate attorney fees. Barbara claims Russell has not seriously attempted to obtain another employment position and is, in actuality, enjoying an early retirement, even contemplating a move to Florida. Russell testified before the modification court that his earning capacity is currently at approximately \$8.00 per hour. However, it also came to light that he received a job offer paying \$28,000 annually, reflecting an earning capacity closer to the range of \$13.00 per hour. The trial court made a determination that Russell's current earning capacity, with retirement funds and his self-professed ability to obtain a position paying \$8.00 per hour, totaled about half of his former income. The trial court, therefore, modified the alimony obligation by reducing it to one half of the original order. Both parties are close to reaching retirement age but Russell is much better situated financially for retirement than is Barbara. To allow both parties to continue to enjoy a comparable standard of living, we find the trial court did not

abuse its discretion in reducing, but not eliminating, Barbara's spousal support. Accordingly, we affirm.

Barbara requests an award of attorney fees for defending the trial court ruling. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa App. 1994). 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) (citations omitted). After reviewing the record, we find an order of appellate attorney fees is appropriate in this case and, accordingly, award Barbara \$1,000.

AFFIRMED.