

IN THE COURT OF APPEALS OF IOWA

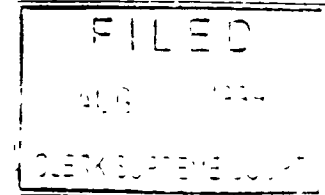
No. 1999-49 (9-204) / 98-1213

Filed August 27, 1999

**IN RE THE MARRIAGE OF LARRY J. SCHNEEKLOTH
AND PATRICIA A. SCHNEEKLOTH**

**Upon the Petition of
LARRY J. SCHNEEKLOTH,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
PATRICIA A. SCHNEEKLOTH,**
Respondent-Appellant/Cross-Appellant.



Appeal from the Iowa District Court for Benton County, William L. Thomas,
Judge.

On appeal from the entry of a modification order in a dissolution action, the
appellant claims the district court erred in failing to completely eliminate his alimony
obligation. **AFFIRMED.**

Michael L. Mollman of Mollman Law Office, Cedar Rapids, for appellant.

Stephen B. Jackson and **Stephen B. Jackson, Jr.**, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Huitink and Vogel, JJ.

SACKETT, C.J.

Petitioner-appellant Larry J. Schneekloth appeals and respondent-appellee Patricia A. Schneekloth cross-appeals from the district court's modification of Larry's obligation to pay alimony established under the provisions of their March 24, 1997 dissolution decree. We affirm.

We review equity matters de novo. Iowa R. App. P. 4; *In re Marriage of Dannen*, 509 N.W.2d 132, 133 (Iowa App. 1993). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Whelchel*, 476 N.W.2d 104, 106 (Iowa App. 1991).

At the time of the dissolution, the district court approved a stipulation made by the parties dividing certain assets and liabilities. One of the assets was a bowling alley business which the parties agreed they would own as tenants in common. It was further agreed Larry would operate the bowling alley and receive the profits. It was stipulated if Larry did not sell the business in two years, he would purchase Patricia's interest.

The issue of whether Patricia was to receive alimony, and the amount she was to receive was litigated by the dissolution court. Larry, at the time, had income from the bowling alley, a \$640 a month annuity as a result of a work-related injury, and wages.

As to Patricia's claim for alimony, the dissolution court determined:

Larry shall pay alimony to Patricia in the sum of \$1,470 per month . . . continuing until the first to occur of the following events: Patricia dies or remarries or cohabits with a person of the opposite sex or Larry retires and receives Social Security benefits, provided his retirement occurs at his age 65 or older. When Larry retires and receives Social Security benefits, provided his retirement occurs at his age 65 or older, his alimony obligation shall be reduced to the sum of one-half the difference between Larry's monthly Social Security payment and Patricia's monthly Social Security payment (or the amount Patricia would be eligible for at her age 65 if she is not then retired). Larry's alimony obligation shall terminate on his death at his age 65 or later. In the event that Larry dies prior to attaining age 65, the remaining unpaid alimony shall be an obligation of his estate up to the sum of \$100,000, the amount of the life insurance Larry is obligated to maintain to secure his alimony obligation.

Provided, however, at such time as Larry's monthly Worker's Compensation annuity payments run out, the monthly alimony payments paid by Larry to Patricia shall be reduced to the sum of \$1,070 per month payable bimonthly at the rate of \$535 on the 1st day of each month and \$535 on the 15th day of each month. These payments shall continue until Larry's alimony obligation is satisfied pursuant to the terms of the preceding paragraph.

In July of 1997, Larry petitioned for modification. He contended he was not able to work and the bowling alley had been sold. Larry claimed his income had decreased substantially following the sale of the bowling alley.

The district court at the modification hearing found Larry had shown the required substantial change of circumstances to justify modification of the initial alimony award. Larry's alimony obligation was decreased to \$500 a month. Larry contends this is yet too much alimony, and Patricia contends it is not enough.

Larry has the burden of showing a substantial change of circumstances such as support a modification of the alimony award in the dissolution decree. *See In re Marriage of Cooper*, 524 N.W.2d 204, 206 (Iowa App. 1994). The dissolution decree being binding on the parties as to the circumstances as then existed. *See Smith v. Smith*, 254 Iowa 1120, 1123, 120 N.W.2d 448, 450 (1963).

In their early fifties, both Larry and Patricia have health problems. Larry suffered a thirty-five percent disability as a result of his work-related accident. Patricia suffers from Lupus and receives disability social security in the amount of \$315 a month.

The district court found the sale of the bowling alley and division of the proceeds with Patricia resulted in Larry losing the income from the operation as well as the advantages, including an apartment he occupied in the bowling alley business. The court found Larry had no similar business opportunity available to him.

The district court determined Larry was capable of earning \$6.50 an hour for a forty-hour week, fifty weeks a year, and then determined alimony of \$500 a month to be appropriate.

The bowling alley was sold in June of 1997, for \$100,000. After paying off their contract seller and settlement costs, there was a cash payment of about \$33,000 remaining for the parties to divide equally. However, at the time of settlement, Larry's share was charged with four months of unpaid alimony.

Larry's 1997 tax return showed he reported \$830 in wages and \$5445 as net income from the bowling alley and a capital gain of about \$5000.

Larry does not have the ability with the sale of the bowling alley to pay the alimony initially ordered. He showed the required change of circumstances. We find the modification amount equitable and affirm on appeal and cross-appeal. We award no appellate attorney fees and tax costs on appeal one-half to each party.

AFFIRMED.