IN THE COURT OF APPEALS OF IOWA

No. 9-003 / 97-1188
Filed June 23, 1999

IN RE THE MARRIAGE OF DAVID JOHN DAVIS AND BEVERLY JEAN DAVIS

Upon the Petition of
DAVID JOHN DAVIS,

Petitioner-Appellant,

And Concerning
BEVERLY JEAN DAVIS,

Respondent-Appellee.

FILED
JUN 23 1999

Appeal from the Iowa District Court for Polk County, William H. Joy, Judge.

The petitioner appeals the district court's denial of his petition to modify the alimony provision of the decree of dissolution. **AFFIRMED.**

Van M. Plumb of Law Office of Van M. Plumb, West Des Moines, for appellant.

Diane L. Dornburg, Des Moines, for appellee.

Considered by Sackett, C.J., Streit, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

The petitioner-appellant, David Davis, appeals the district court's denial of his modification petition requesting a termination of his alimony obligation. He claims the district court erred in ruling respondent-appellee, Beverly Joy's remarriage was not cause to terminate his alimony payments to her. We affirm.

The marriage of David and Beverly Davis was dissolved by decree on October 12, 1995. The decree ordered David to pay $200 per month in alimony for thirty-six months. On January 22, 1997, David filed a petition for modification of the decree, alleging Beverly had remarried, justifying a termination of alimony.

The district court denied the petition. The court found David earned a net income of $2517.78 per month, while Beverly was unemployed and her new husband was only employed part-time at UPS. Beverly and her new husband also have a four-month-old child from their marriage. The court concluded the original decree awarded rehabilitative, rather than reimbursement alimony, and given Beverly's continued poor financial condition, David failed to prove a substantial change in circumstances justifying termination of his alimony obligation.

On appeal, David claims Beverly failed to prove any "extraordinary circumstances" exist justifying a continuation of alimony. *See In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985). He asserts Beverly acknowledged at the modification hearing no extraordinary circumstances exist.

Although remarriage does not automatically terminate an alimony obligation, it does shift the burden to the recipient to show "extraordinary circumstances" to

justify continuing alimony. *Shima*, 360 N.W.2d at 828. In many instances, this heavy burden effectively eliminates alimony following remarriage. This result comports with the underlying rationale for the shift of the burden of proof. Generally, it is contrary to public policy to permit a person to be supported by a spouse and a former spouse concurrently. *Id.*; *In re Marriage of Cooper*, 451 N.W.2d 507, 509 (Iowa App. 1989). In some cases, however, it is appropriate to continue alimony after remarriage of the recipient. Whether remarriage terminates alimony depends, primarily, on the purpose behind the award of alimony. Rehabilitative and reimbursement alimony, for example, are often unaffected by remarriage. *See In re Marriage of Francis*, 442 N.W.2d 59, 67 (Iowa 1989).

The decree of dissolution did not specify the purpose of the alimony award, but did, by limiting its term to thirty-six months, imply it was not traditional or permanent alimony. The district court weighed the language of the decree and the evidence and testimony presented in the modification hearing to determine whether the alimony was rehabilitative or reimbursement alimony and concluded the original alimony award "was in fact rehabilitative alimony." The record does not support finding the kind of "economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other" which characterize reimbursement alimony awards. *Francis*, 442 N.W.2d at 63-64; *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). We find the alimony was to assist Beverly during the time it would take her to become more self-supporting.

At the time of the original dissolution, Beverly had primary physical care of three preschool children. She was unemployed and could not realistically find employment which would pay enough that she could pay child care and net any substantial income. At the time of the modification hearing, she still was unemployed.[1] Her husband was employed part-time at UPS, but hoped to move up in the organization over time. Although David claims no "extraordinary circumstances" exist, we have recognized "extraordinary circumstances" for purposes of this rule can consist of the inability of a new spouse to furnish support. *In re Marriage of Schober*, 379 N.W.2d 46, 47 (Iowa App. 1985). Beverly estimated it would be up to two years before her husband would achieve full-time employment and be able to support the family. The alimony payments would assist Beverly during the time it would take her new husband to gain a position in which he could support the family. We find extraordinary circumstances support continuing the alimony payments as ordered in the decree of dissolution. The district court properly dismissed David's petition for modification.

AFFIRMED.

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[1] Beverly had remarried and borne her fourth child in the time between the dissolution and the modification.

At the time of the original dissolution, Beverly had primary physical care of three preschool children. She was unemployed and could not realistically find employment which would pay enough that she could pay child care and net any substantial income. At the time of the modification hearing, she still was unemployed.[1] Her husband was employed part-time at UPS, but hoped to move up in the organization over time. Although David claims no "extraordinary circumstances" exist, we have recognized "extraordinary circumstances" for purposes of this rule can consist of the inability of a new spouse to furnish support. *In re Marriage of Schober*, 379 N.W.2d 46, 47 (Iowa App. 1985). Beverly estimated it would be up to two years before her husband would achieve full-time employment and be able to support the family. The alimony payments would assist Beverly during the time it would take her new husband to gain a position in which he could support the family. We find extraordinary circumstances support continuing the alimony payments as ordered in the decree of dissolution. The district court properly dismissed David's petition for modification.

AFFIRMED.

Streit, J., concurs; Sackett, C.J., concurs specially without opinion.

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[1] Beverly had remarried and borne her fourth child in the time between the dissolution and the modification.

No. 97-1188. [9-003] IN RE MARRIAGE OF DAVIS

Appeal from the Iowa District Court for Polk County, William H. Joy, Judge. **AFFIRMED.** Considered by Sackett, C.J., Streit, J., and Habhab, S.J. Opinion by Habhab, S.J. Sackett, C.J., concurs specially without opinion. (4 pages $1.60)

The marriage of David and Beverly Davis was dissolved by decree in 1995. The decree ordered David to pay $200 per month in alimony for thirty-six months. In 1997, David filed a petition for modification of the decree, alleging Beverly had remarried. The district court denied the petition. The court concluded the original decree awarded rehabilitative, rather than reimbursement alimony. On appeal, David claims Beverly failed to prove any "extraordinary circumstances" exist justifying a continuation of alimony. ***OPINION HOLDS:*** Whether remarriage terminates alimony depends, primarily, on the purpose behind the award of alimony. Rehabilitative and reimbursement alimony, for example, are often unaffected by remarriage. We find the alimony was to assist Beverly during the time it would take her to become more self-supporting. We find extraordinary circumstances support continuing the alimony payments as ordered in the decree of dissolution.