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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-470 / 00-1679
Filed November 16, 2001

IN RE THE MARRIAGE OF JOAN KAY SUMMERS AND WEBSTER ROBERT SUMMERS

Upon the Petition of
JOAN KAY SUMMERS,
Petitioner-Appellee,

and Concerning
WEBSTER ROBERT SUMMERS,
Respondent-Appellant.

Appeal from the Iowa District Court for Clay County, Frank B. Nelson, Judge.

The respondent appeals a district court ruling denying his petition to modify the alimony provisions of the parties' dissolution decree. **AFFIRMED.**

John L. Sandy of Sandy Law Firm, P.C., Spirit Lake, for appellant.

Michael J. Houchins of Zenor & Houchins, Spencer, for appellee.

Considered by Mahan, P.J., and Hecht, J., and Habhab, S.J.*

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*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2001).

MAHAN, P.J.

The respondent Webster Robert Summers appeals a district court ruling denying his petition to modify the alimony provisions of the parties' dissolution decree. Webster argues the district court erred in concluding even though he had proven a material and substantial change in circumstances, he was not entitled to relief under the clean hands doctrine. We affirm.

Background Facts and Proceedings. Joan and Webster Summers were married in 1970. Joan filed a petition for dissolution in August 1994. Following a hearing on temporary matters, the district court ordered Webster to pay Joan temporary monthly alimony of $1000. The parties' marriage was dissolved by decree in December 1995. The issue of alimony was reserved and decided by a supplemental decree entered in January 1996. Webster was ordered to pay monthly alimony of $700 from January 1996 until December 2009. The alimony award was challenged by a rule 179(b) motion, which was denied.

The incomes of both parties have changed since the issuance of their dissolution decree. At the time of the decree, Webster was the owner of Bjornstad Plumbing and Heating, Inc., and earned $32,908 per year. Webster's business, however, later developed severe financial troubles and Webster was forced to file bankruptcy in 1996. He no longer owns Bjornstad Plumbing and Heating. He currently works as an employee for Lakes Plumbing and Heating and earns $23,500 per year. The extent of Webster's monthly expenses is unknown since he failed to provide the district court a financial affidavit to show these expenses. However, Lakes Plumbing and Heating does provide Webster

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with health insurance, contribution to a retirement account, and a company vehicle. Also, Webster purchases Minnesota Vikings season tickets at a cost of $504 per year, and has an Edward D. Jones IRA account worth more than $6000.

Joan's income has increased since the time of divorce, primarily because she has two jobs and works more than forty hours a week. Joan's primary employment is with the YMCA where she has a $20,000 yearly salary. In addition, she works at Wal-Mart and earns $6.58 per hour. Joan is working between fifty-five and sixty hours per week between the two jobs. Joan's monthly expenses include a mortgage payment of $340, health insurance premium for their daughter of $151, and real estate taxes of $110. Including her other expenses, Joan's total monthly expenses are $1662.

On March 23, 2000, Webster filed a petition to modify the alimony provisions of the decree, arguing his income had dropped substantially and he could not afford to meet his alimony obligation. He maintained he had virtually no assets and owed over $50,000 in back taxes to the Internal Revenue Service and Iowa Department of Revenue. He also maintained he had an overall debt of over $100,000. The matter proceeded to trial on August 10, 2000. The district court denied the motion, invoking the clean hands doctrine. The court concluded Webster was over $35,000 in arrears in his alimony payments, and he offered no explanation of his failure to even make an effort to comply with the court's previous orders. Webster appeals.

Standard of Review. Our review is de novo. *In re Marriage of Rietz*, 585 N.W.2d 226, 229 (Iowa 1998). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith,* 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact-findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P 14(f)(7). We recognize the district court "has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." *In re Marriage of Walters*, 575 N.W.2d 739, 741 (Iowa 1998).

Modification of Alimony. "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." *In re Marriage of Van Doren*, 474 N.W.2d 583, 586 (Iowa Ct. App. 1991); *see also* Iowa Code § 598.21(8) (1999). The burden rests on the party seeking modification to establish such a change in circumstances by a preponderance of evidence. *Van Doren*, 474 N.W.2d at 586.

Webster argues the district court erred in concluding even though he had proven a material and substantial change in circumstances, he was not entitled to relief under the clean hands doctrine. We disagree.

The district court stated in its ruling:

> Examining the income and assets of the parties and the changes since the dissolution would, *if we looked no further*, obviously lead to the conclusion that there has been a substantial change in circumstances sufficient to warrant modification of the

> alimony award. Other matters do impact on the question. The respondent is a master plumber, yet is working for $12 per hour. His job does provide health insurance, contribution to a retirement account and three weeks' vacation. He works year round, but only 40 hours maximum per week. He could earn more money with other plumbing companies (see, for example, Exhibits 10 and 11).
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> The most troublesome aspect of this case is the respondent's apparent disdain for the court's orders. The temporary spousal support was ordered in October of 1994. He paid the ordered support in November and December of 1994, then basically quit making payments. He was $6,500 delinquent when the dissolution case was tried in December of 1995. After the Supplement Dissolution Decree ordering alimony was entered, respondent did pay the $700 monthly alimony in January, February, March, and May 1996, and then again quit. No voluntary payments have been made since May of 1996. He is currently delinquent in an amount in excess of $35,000, not considering interest. *What respondent has done is thumb his nose at the court, then expect the court to reward him by reducing or eliminating his alimony obligation. He did not offer any explanation of his failure to make even an effort to comply with the court-ordered alimony. During his bankruptcy he secured a stay to prevent collection processes from being instigated, even though he knew alimony is not a dischargeable debt. While courts do not often invoke the clean-hands doctrine, this is a case which requires it. There has been no good faith effort exhibited by respondent with respect to his obligation. He does not deserve the consideration of the court in this case.*

(Emphasis added) (footnote omitted).

We have stated, "Under the 'unclean hands' doctrine a court in equity may deny relief based on a party's inequitable, unfair, dishonest, fraudulent, or deceitful conduct." *In re Marriage of Phillips*, 493 N.W.2d 872, 878 (Iowa Ct. App. 1992). As a result, the clean hands doctrine considers whether the party seeking relief has engaged in inequitable conduct that has harmed the party against whom he seeks relief. *See Ellwood v. Mid States Commodities, Inc.*, 404 N.W.2d 174, 184 (Iowa 1987). We invoke the doctrine to protect the integrity of the court where the granting of affirmative relief would run contrary to public

policy or lend the court's aid to fraudulent, illegal, or unconscionable conduct. *In re Herm's Estate*, 284 N.W.2d 191, 196 (Iowa 1979). "These principles are consistent with our long held view 'courts of equity will . . . guard with jealous care the rights of [a party to dissolution]. . . .'" *In re Marriage of Farr*, 542 N.W.2d 828, 832 (Iowa 1996) (citation omitted).

Webster argues because his income had dropped substantially, he could not afford to meet his alimony obligation given he has virtually no assets, owes over $50,000 in back taxes, and has an overall debt of over $100,000. Despite these contentions, Webster has offered no explanation of his failure to even make an effort to comply with the district court's previous orders. No voluntary payments have been made since May of 1996. At the time of the hearing on the petition to decrease support, Webster was not paying any support. We recognize Webster is substantially in debt and his income at the time of hearing has decreased, but he could have made an attempt to pay on this obligation. The parties have stipulated Webster is currently delinquent in excess of $42,000. There is nothing in the record to suggest his expenses are such that they would prevent him from meeting his alimony obligation. Webster's employer provides him with health insurance, contribution to a retirement account, and a company vehicle. He currently lives with his girlfriend and there is no evidence to suggest he incurs any expenses for living at that residence.[1] Webster continues to spend money to attend Minnesota Vikings games on a regular basis. Finally, even

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[1] In addition, the record shows while living at his girlfriend's residence, there has been substantial remodeling to the house, which includes a two-car garage addition, new siding for the house, a new bathroom addition, and a new deck.

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though Webster owes a substantial amount of back taxes, he is not making any monthly payments on this amount pursuant to an agreement he has with both the Internal Revenue Service and Iowa Department of Revenue.

Based on this evidence, the district court concluded, and we agree, there has been no good faith effort by Webster with respect to his alimony obligation. Webster has engaged in inequitable conduct that has harmed Joan. In equity, our law should condemn, not reward the type of behavior in which Webster has engaged. *Cf. Farr*, 542 N.W.2d at 833; *Phillips*, 493 N.W.2d at 878. Furthermore, our supreme court has recognized modification is warranted if it "appear[s] that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice." *Walters*, 575 N.W.2d at 741. Not only do we conclude continued enforcement of the original decree will not result in positive wrong or injustice, but we further conclude that to modify the original decree in this case would indeed result in positive wrong or injustice.

AFFIRMED.