FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF FLOYD V. HAMMER AND JO BETH HAMMER

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UPON THE PETITION OF **FLOYD V. HAMMER,**	)	Filed September 6, 1984
Petitioner-Appellant,	)	4-258 83-1331
AND CONCERNING **JO BETH HAMMER,**	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Hardin County--Paul E. Hellwege, Judge.

Petitioner appeals from denial of application to modify dissolution decree. AFFIRMED.

Marie Condon of the Fairall Firm, Marshalltown, for petitioner-appellant.

James P. Walters of High & Walters, Iowa Falls, for petitioner-appellant.

Considered by Oxberger, C.J., Donielson, and Schlegel, JJ.

OXBERGER, C.J.

Petitioner appeals from a trial court decision denying application for modification of a dissolution decree. It is petitioner's claim that since the respondent has not completed her advanced education and has obtained employment, there is a substantial change of circumstances. We affirm the trial court's denial of the application.

The marriage between petitioner, Floyd V. Hammer, and respondent Jo Beth Hammer, was dissolved by decree November 1980. Jo Beth was awarded $250 per month in alimony. She had requested $900 per month in alimony until she acquired her master of arts degree, which was expected to be completed in June 1983. She revealed to the court at that time that the advanced degree would result in increased earnings to her of $5000 per year. She further informed the court she would complete undergraduate work in May 1981. The court instead awarded her the lower amount.

Jo Beth graduated in May 1981 but has not gone on to complete her master of arts degree. She has indicated she is taking courses towards such a degree, although she is not enrolled full-time. Floyd argues that since she has not completed her education as expected, and since she is now employed as a vocational specialist at a salary of $794.98 per month, alimony should be eliminated. He further states that his prior salary of $1747 before expenses has now decreased to $1578 and he has added expenses of $1488. To continue alimony, Floyd claims, would cause him undue hardship.

Support provisions of a divorce decree will be modified when a substantial change in circumstances is shown. Iowa Code § 598.21(8)(1983). The change must involve circumstances not within the contemplation of the court at the time of the order. That which was known or could have been discovered with reasonable

diligence is conclusive. Huffman v. Huffman, 176 N.W.2d 859 (Iowa 1970). There must also result a positive wrong or injustice which results from a permanent and not temporary change. McDonald v. McDonald, 183 N.W.2d 186 (Iowa 1971); Thayer v. Thayer, 286 N.W.2d 222 (Iowa Ct. App. 1979).

The courts have indicated that when knowledge of circumstances is shown by the trial court, those same circumstances cannot be used to attempt modification of the court's decree. The court in In re Marriage of Sanders, 255 N.W.2d 109, 110 (Iowa 1977) noted the decree recognized the wife's income would increase. The Iowa Supreme Court looked to evidence presented at the divorce trial that the wife's income would increase to $350 per month and concluded that the trial court indicated modification was proper only beyond this point. Id. Here, too, we can look to the decree and evidence presented at the time of the decree to see that the circumstances presented here were within the trial court's contemplation.

The court awarded an amount lower than Jo Beth requested if she were to obtain her Master's degree. Evidence was presented that if she obtained the degree, her income would increase; but such an increase will not occur without the advanced degree. The court was aware she would obtain an undergraduate degree. It further knew that Floyd's building construction business would result in a variable income to him. The parties dispute the accounting system used to arrive at Floyd's income but both parties agree his net worth is $144,000. The trial court concluded properly that no significant change had occurred in circumstances not contemplated by the court which would work a hardship on petitioner.

AFFIRMED.