IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 7-156 / 96-819

IN RE THE MARRIAGE OF JANET MAE WICKER n/k/a JANET MAE FROST AND RICHARD NEAL WICKER

000367

Upon the Petition of
JANET MAE WICKER, n/k/a **JANET MAE FROST,**
Appellee,

And Concerning
RICHARD NEAL WICKER,
Appellant.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

The respondent appeals a district court ruling denying his petition for modification of the child support provisions of the original decree. **AFFIRMED.**

Douglas R. Smalley of Riemenschneider, Rydell & Smalley, Des Moines, for appellant.

Janet Mae Frost, Urbandale, pro se.

Heard by Habhab, C.J., and Cady and Vogel, JJ.

VOGEL, J. 000368

Richard Wicker appeals a district court ruling denying his petition for modification of the child support provisions of the original decree. The essential issue we must decide is whether Richard, who walked off his job in a labor strike, has demonstrated a permanent, material, and substantial change of circumstances to warrant a reduction in his child support payments.

The marriage of Richard and Janet Wicker was dissolved on February 28, 1994. At the time, Richard was employed at Bridgestone-Firestone earning a net monthly income of $2681.50. Janet earned over $1000 per month. Pursuant to the decree, Richard was ordered to pay $603.34 per month in child support. On April 12, 1994, Richard voluntarily walked off his job at Bridgestone-Firestone. One week later, he obtained employment with Miller the Driller for $10.50 per hour. However, he lost this job in November 1994, for reasons not clear in the record, and was not called back. Richard began receiving unemployment in the amount of $421 every two weeks. He also received $100 per week in strike benefits. While Richard has had income from other jobs since the strike began, none has exceeded $10.50 per hour compared to $15.30 per hour at Bridgestone-Firestone.

Scope of review. Our scope of review of this modification action is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Modification of child support orders. There are several principles that have emerged from Iowa case law relating to modifying child support orders. We recognize that "parents who reduce their income through an improper intent to deprive their children of support or in reckless disregard for their children's well-being are not entitled to a commensurate reduction in child support payments." *In re Marriage of Swan*, 526 N.W.2d 320, 324 (Iowa 1995); *see In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993). However, in this case we are not holding a worker who walks off his job in a labor strike does so through an improper intent to deprive his children of child support payments or with a reckless disregard for his children's well-being. Our focus, rather, is on the temporal nature of a strike, i.e., whether it is permanent in nature warranting a reduction in child support payments.

In this case, we adhere to a general rule that "modification should be granted if there has been a substantial lowering of earning power for a sustained period of time." *In re Marriage of Cooper*, 524 N.W.2d 201, 207 (Iowa App. 1994) (quoting *In re Marriage of Shepherd*, 429 N.W.2d 145, 147 (Iowa 1988)). The actual change in circumstances warranting a reduction in child support payments must be permanent or continuous rather than temporary. *See Shepherd*, 429 N.W.2d at 147 (holding twenty-two weeks of reduced income because of a labor strike was a temporary reduction in income and did not constitute a material change in circumstances warranting a modification of petitioner's child support obligation).

After an exhaustive review of Iowa cases wherein modifications have been sought after reduced income, the Iowa Supreme Court has recognized:

> current inability to pay has become less a consideration and long range capacity to earn money has become more of a consideration; and . . . *any* voluntariness in diminished earning capacity has become increasingly an impediment to modification.

In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987) (citing *In re Marriage of Vetternack*, 334 N.W.2d 761, 763 (Iowa 1983)). (Emphasis added.)

We agree with the trial court that Richard's current circumstances do not represent a permanent, material, and substantial change in circumstances justifying a reduction in his child support obligations. While we acknowledge Richard's diligent efforts in obtaining employment within one week of leaving Bridgestone-Firestone, and further obtaining employment after his layoff at Miller the Driller, the fact that Richard now only earns $7.00 per hour at R & D Plumbing, grossing less than 50% of his former net, does not mitigate the fact that his earning *capacity* remains the same. Thus, because Richard is currently underemployed does not mean his long-range capacity to earn money has been diminished. *See Wahlert*, 400 N.W.2d at 560.

We conclude a reduction in income resulting from a labor strike is not continuous and permanent enough to warrant a reduction in Richard's child support obligation. Having considered all of Richard's arguments on appeal, we affirm the decision of the district court.

AFFIRMED.