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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-167 / 91-1057

IN RE THE MARRIAGE OF JEANICE NEPPL AND JACK NEPPL

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Upon the Petition of
JEANICE NEPPL, n/k/a JEANICE REGNIER,

Appellant,

And Concerning
JACK NEPPL,

Appellee.

Appeal from the Iowa District Court for Pocahontas County, Mark S. Cady, Judge.

Petitioner wife appeals the district court's order denying her application for modification of the parties' dissolution decree. **AFFIRMED.**

Steve Hamilton of the Hamilton Law Firm, Storm Lake, for appellant.

Donald M. Winkler, Laurens, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, P.J.

Petitioner wife appeals the district court's order denying her application for modification of the child support provisions of the parties' dissolution decree. Petitioner contends the district court erred in determining a material and substantial change in circumstances warranting a modification in child support had not occurred.

The marriage of Jeanice and Jack Neppl was dissolved in March 1987. Jeanice was given physical care of the parties' two children (Zachary, born in February 1980, and Lindsay, born in November 1982) in the joint custody arrangement, and Jack was directed to pay child support of $150 per month per child. At the time of the dissolution, Jack was earning $20,283 per year, and Jeanice was earning $9,530 per year.

In July 1990 Jeanice applied for a modification of the dissolution decree; she requested her child support award be increased. Jack answered the application, and a trial was held in May 1991. The evidence introduced indicated, among other things, the following: In May 1989 Jeanice remarried. She now has two children from this marriage. She discontinued her employment in December 1989 after the birth of the first child. She earned $16,548 in 1989. She expects to return to outside employment in the future. Jeanice's new husband earned $40,000 in 1990. Jeanice's expenses for the parties' children have increased since the

dissolution. Jack has not remarried. He earned $23,479 in 1990.

In June 1991 the district court entered an order denying Jeanice's application for modification. Jeanice has appealed. She asserts the district court should have increased her child support award because a substantial change in circumstances has occurred since the dissolution decree was entered and because child support guidelines have now been adopted.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to 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 fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial 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 Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack and applied in Kern are applicable here as well:

> A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762. In addition, we must consider the factors enumerated in Iowa Code section 598.21(8) (1991).

Jeanice bases her request for increased child support on three factors: (1) the adoption of the Iowa Child Support Guidelines; (2) the combined effects of an increase in the cost of raising children and a decrease in purchasing power; and (3) the increase in Jack's income. She argues these factors congruently constitute a material and substantial change in circumstances. We disagree.

"The child support guidelines now in effect do not--standing alone--constitute a change in circumstances as to a child support order entered pursuant to section 598.21 before October 12, 1989." In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). Since the child support order in the present case was entered March 31, 1987, the change in guidelines alone is insufficient to warrant a modification. However, Iowa Code section 598.21(9) (1991), as amended effective July 1, 1992, provides in pertinent part:

> Notwithstanding subsection 8, a substantial change in circumstances exists when the court order for child support deviates by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4.

Having thoroughly reviewed the record, we conclude the child support award contained in the parties' original dissolution decree, dated March 31, 1987, does deviate by more than ten percent from the amount of child support which would be presently due pursuant to the 1990 child support guidelines. Therefore, if the amended version of Iowa Code section 598.21(9) (1991) applies retrospectively to the instant case, a substantial change in circumstances exists requiring a modification in the child support award. We hold the amendatory statute applies prospectively only and, consequently, does not apply to the present case.

The legislature fails to expressly state in the amendment whether the amendment is to have retrospective or prospective application. However, Iowa Code section 4.5 provides: "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." The supreme court applied this code provision in Pfiffner v. Roth, 379 N.W.2d 357, 360 (Iowa 1985), and held that an amendment which does not require retrospective application is presumed to be prospective only.

We are aware of Emmet County State Bank v. Reutter, 439 N.W.2d 651 (Iowa 1989), in which the court addressed the

question of whether a 1985 legislative amendment pertaining to Iowa Code section 524.910 applied retrospectively or prospectively only. The court stated:

> The legislature's failure to expressly state in the amendment whether it was to have retrospective or prospective application is not determinative. See Schnebly v. St. Joseph Mercy Hospital, 166 N.W.2d 780, 782 (Iowa 1962) (intent to give statute retrospective or prospective application may be expressed in the statute or implied from its language). The determination instead boils down to whether the legislature intended to give the amendment here retrospective or prospective application. To make that determination, our cases have developed a three-part test. First, we look to the language of the new legislation; second, we consider the evil to be remedied; and third, we consider whether there was a previously existing statute governing or limiting the mischief which the new legislation was intended to remedy. In re Incorporation of Town of Avon Lake, 249 Iowa 1112, 1118, 88 N.W.2d 784, 787 (1958); Appleby v. Farmers State Bank, 244 Iowa 288, 294-95, 56 N.W.2d 917, 921 (1953).

We are unsure exactly how the Reutter decision "squares" with the presumption of prospective application proclaimed by the legislature in the plain meaning of Iowa Code section 4.5 (1991) and by the supreme court in Pfiffner in the absence of the expressed legislative intent that the amended statute should operate retroactively. However, even after applying the Reutter three-part test, we conclude the amended version of Iowa Code section 598.21(9) (1991) was intended by the legislature to apply prospectively only.

Next, Jeanice argues the costs of raising children have increased while her purchasing power has decreased, and she cites In re Marriage of Brands, 394 N.W.2d 855 (Iowa App.

1986), to support her argument that these factors are sufficient to modify child support awards. See also Iowa Code § 598.21(8)(1991). While the effects of inflation may be a factor in considering a change in child support, the economic changes experienced in the present case are a result of Jeanice's own actions. While we take judicial notice of the reduced purchasing power of the dollar, Jeanice's reduced purchasing power results primarily from her own decision to voluntarily give up her employment position. As one would expect, Jeanice's decision to quit working has had an adverse impact on her income. In In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987), the supreme court stated:

> [C]urrent inability 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.

Wahlert, 400 N.W.2d at 560 (citing In re Marriage of Vetternack, 334 N.W.2d 761, 763 (Iowa 1983)).

Furthermore, a change necessary to support modification must be more or less permanent or continuous, not temporary. In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983). Jeanice has testified she intends to return to work in the future; her unemployment is not permanent. Jeanice experienced a substantial increase in income when she remarried prior to quitting her job, and the employment termination was her own choice.

Finally, Jeanice argues Jack's increased income from $20,283 in 1987 to $23,479 in 1990 constitutes a substantial change. Jack has experienced no real economic changes in the five years since the parties' divorce, except for this modest increase in his income. As Jeanice, herself, recognizes (judging from her testimony), the change in Jack's financial condition since March 1987 is insubstantial.

Having thoroughly reviewed this record, we conclude the factors enumerated by Jeanice as the basis for her modification claim fail to constitute a material and substantial change in circumstances. Continued enforcement of the original decree is equitable and just.

AFFIRMED.