FILED
DEC 29 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONNA L. KRUG AND RAYMOND KRUG

242

Upon the Petition of)

DONNA L. KRUG,)

Petitioner-Appellee,)

And Concerning)

RAYMOND KRUG,)

Respondent-Appellant.)

Filed December 29, 1982

2-231
2-67377

Appeal from Linn District Court - Thomas M. Horan, Judge.

Respondent husband appeals from the court's order overruling his application to modify the alimony provisions of the parties' dissolution decree. REVERSED AND REMANDED.

Wallace L. Taylor of Keyes, Bennett & Kucera, Cedar Rapids, for respondent-appellant.

Kevin P. Shea of John J. Shea Law Offices, Cedar Rapids, for petitioner-appellee.

Considered en banc.

DONIELSON, J.

Respondent husband appeals from the order denying his application to modify alimony provisions of the parties' 1975 dissolution decree. On appeal he asserts that the wife's alleged cohabitation with another man constitutes a material and substantial change of circumstances rendering the original alimony award inequitable. We reverse and remand.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4; In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977).

I.

The dissolution decree provided, among other things, that respondent was to pay petitioner $50 per week alimony terminable upon the petitioner wife's remarriage or the death of either party. In December, 1978, respondent filed an application to modify the decree. Among the reasons set forth to constitute a material change of circumstances was that petitioner was alleged to be cohabiting with various men. The court modified the visitation provisions of the decree but ruled that respondent "failed to prove by preponderance of the evidence any change of circumstances such as to justify a modification of child custody or alimony or child support." The court did not specifically address the issue of whether petitioner was, in fact, cohabitating with a man.

In April, 1980, the respondent filed an application for modification seeking to delete the alimony provision of the decree. He alleged that petitioner cohabitated with another man in her home; that he paid rent, shared other expenses, and attended social events with her. The court ruled that respondent did not prove that petitioner had entered into a common law marriage and that he "failed to prove by a preponderance of the evidence that the change in circumstances upon which he relies is material and substantial and more or less permanent and continuous in nature, not within the knowledge or contemplation of the Court

when the marriage dissolution decree was entered or when the last application to modify decree of dissolution was ruled on on January 9, 1979."

Respondent then filed a motion with the court pursuant to Iowa Rule 179(b) to enlarge the amended findings and conclusions in the following particulars: 1) to find that petitioner is cohabiting with a man; 2) to find as a matter of law that cohabitation of one who is receiving alimony with another is sufficient grounds to justify termination of alimony; 3) to state why the court found respondent had not proved a material and substantial change since the initial decree; or 4) to state why respondent had not proved a material and substantial change since the date of the last modification ruling; and 5) to find that petitioner's relationship with the other man is more or less permanent and continuous in nature. The court overruled the motion, denying "each and every paragraph thereof." Respondent then instituted this appeal.

II.

The person seeking modification of the alimony provisions of the dissolution decree has the burden to prove a change of circumstances by a preponderance of the evidence. In re Marriage of Full, 255 N.W.2d at 159; Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa Ct. App. 1979). We recognize that in making an alimony award, the conduct or fault of either party is not to be considered. Behrle v. Behrle, 228 N.W.2d 25, 27 (Iowa 1975); In re Marriage of Freese, 226 N.W.2d 800, 802 (Iowa 1975); In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974); In re Marriage of Bare, 203 N.W.2d 551, 555 (Iowa 1973). The key to whether alimony should be awarded is support. Under Iowa Code § 598.21(3), such support payments are to be awarded after consideration of, among other things:

> f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

* * *

> j. Other factors the court may determine to be relevant in an individual case.

The rule for modification of alimony awards should be no different. The court below found that respondent had not established that petitioner had entered a common law marriage, but the court did not specifically address the issue of cohabitation, an issue which may well affect the petitioner's need for support. We believe this is a factor which may be relevant under section 598.21(j). Further, the court refused to address this issue when respondent sought to enlarge the court's findings and conclusions. We believe the court should have done so.

We do not mean to suggest that if petitioner is found to be cohabiting with a man, then the alimony payments should be automatically terminated. We only mean that petitioner's financial status and need for support may be substantially altered by the addition of another person with whom petitioner may share many household expenses. The record is inadequate to make this determination. We therefore remand for the taking of additional evidence on this point. The court shall make specific findings and conclusions regarding petitioner's alleged cohabitation and whether there has been a substantial change in circumstances, financial or otherwise, as a result.

REVERSED AND REMANDED.