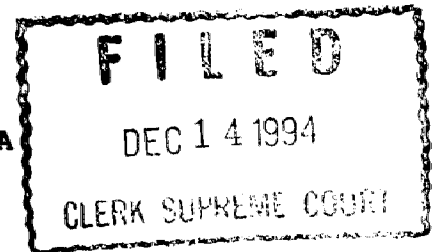


IN THE COURT OF APPEALS OF IOWA

No. 4-427 / 93-1549



IN RE THE MARRIAGE OF REBECCA ANN WILKENS AND
STEPHEN CHARLES WILKENS

Upon the Petition of
REBECCA ANN STANLEY f/k/a
REBECCA ANN WILKENS,

Petitioner-Appellant,

And Concerning
STEPHEN CHARLES WILKENS,

Respondent-Appellee.

Appeal from the Iowa District Court for Marshall
County, Carl E. Peterson, Judge.

Petitioner appeals from a judgment of the district
court denying her application for modification of the child
support provisions of the parties' dissolution decree.
AFFIRMED.

Sharon Soorholtz Greer of Cartwright, Druker & Ryden,
Marshalltown, for appellant.

Bradley J. Rutherford of the Rutherford Law Office,
Marshalltown, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink,
JJ.

HABHAB, J.

Stephen and Rebecca Wilkens were divorced on November 24, 1987. Both are remarried. They have three children, Aimee, born December 31, 1973, Allison, born November 4, 1974, and Adam, born June 6, 1980. Rebecca was awarded primary custody of the children. On November 21, 1991, Rebecca filed an application to modify the decree, requesting an increase in child support. Pursuant to an agreement reached by Stephen and Rebecca, the district court modified the decree, providing that Stephen would pay Rebecca \$600 per month in child support, and that Aimee would move in with Stephen. Stephen was to assume all financial responsibility for Aimee's care, including all college expenses not covered by grants. Rebecca was not required to contribute to Aimee's support.

Aimee moved in with her father, but in January 1993, Aimee decided to move back with Rebecca. On February 9, 1993, Rebecca filed another application for modification, seeking an increase in child support and an increase in the amount Stephen was expected to pay for college expenses. At trial, Rebecca stated that Stephen had actually paid little in extra costs while Aimee was living with him, and that she had received a lower child support payment because of this arrangement. She also testified that she had difficulty in getting Stephen to pay his share of the medical bills that were not covered by health insurance. Rebecca further noted that Allison would soon be attending

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college, and that Aimee is no longer attending school and would be moving out and in charge of her own expenses.

The district court declined to modify the decree, holding there had not been a substantial change in circumstances subsequent to the first modification hearing requiring an increase in child support. The district court ruled that Stephen be required to pay \$600 per month child support for two children as previously agreed. The court also held that its provisions covering the payment of medical expenses were adequate and declined to change Stephen's obligations regarding the payment of these expenses. The district court additionally held that each party was responsible for their own attorney fees. Rebecca appeals.

I. Scope of review. The scope of review for this equitable modification of a dissolution decree is de novo. Iowa R. App. P. 4. In order to modify a dissolution decree, the party seeking the modification must establish by a preponderance of the evidence that there has been a substantial change in the circumstances since the entry of the decree or the latest modification of the provisions involved. In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992). Those changed circumstances must not have been in the contemplation of the court when the decree or latest modification was entered. In re Marriage of Feustel, 476 N.W.2d 261, 263 (Iowa 1991).

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II. Modification of child support. The district court may modify orders for child support when there is a substantial change in circumstances. Iowa Code § 598.21(8) (1993). Rebecca cites the following changes since the first modification in June 1992: (1) Aimee moved in with Stephen and then moved back with Rebecca in January 1993 after six months with Stephen; (2) Rebecca had to support Aimee from January 1993 to June 1993 without additional support payments from Stephen; (3) Allison has graduated from high school and intends on entering college; (4) Rebecca has better medical insurance available to her through her second husband; (5) Rebecca alleges there was difficulty getting Stephen to contribute payments for a bill for contact lenses; and (6) Stephen received a one-time additional contract payment of \$5,000 through his employment. The district court denied the modification based on a finding there was not a substantial change in circumstances since the first modification in June 1992. We agree with the district court.

None of the factors involving Aimee amount to a substantial change in circumstances. The fact that Aimee moved back with Rebecca does not matter for three reasons. First, past child support payments cannot not be modified, only future payments can. In re Marriage of Stutsman, 311 N.W.2d 73, 76 (Iowa 1981). Second, Rebecca testified at trial that Aimee is moving out and will be responsible for her own expenses. Last, since Aimee is nineteen years old

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and not attending school, she is no longer considered in setting child support payments. Iowa Code § 598.1(6) (1993).

Allison's plans to attend college do not provide a substantial change either. We do not believe this was outside the contemplation of the district court when the first modification was made in June 1992. Further, as the district court noted, there was no cost evidence presented at trial.

We do find the testimony provides a basis to believe the medical insurance under Stephen's plan is worse or more expensive than the medical insurance provided by Rebecca's second husband. As a result, we do not find this creates a substantial change in circumstances. We likewise do not find any difficulties experienced by the parties in paying the bill for the contact lenses to create a substantial change in circumstances warranting a modification of the child support terms of the dissolution decree.

Finally, we are unable to find Stephen's one-time additional contract payment of \$5,000 amounts to a substantial change in circumstances. Stephen testified he expected no such payments in the future. The change of circumstances must be permanent or continuous, not temporary. In re Marriage of Mayer, 347 N.W.2d 681 (Iowa App. 1984).

We find the factors suggested by Rebecca, when viewed together, do not constitute a substantial change in

circumstances. Therefore, we affirm the district court's denial of the request to modify the child support payments.

III. Uninsured medical expenses. Rebecca requests that uninsured medical expenses be split equally between Rebecca and Stephen, and that such payment be made through the clerk of court. This issue stems from Rebecca's difficulty in getting Stephen help pay for a \$23.50 bill for Allison's contact lenses. We find the original dissolution decree adequately provides the responsibilities of the parties in paying for uninsured medical expenses.

IV. Appellate attorney fees. Both parties request attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99 (Iowa App. 1991). We determine each party should pay his or her own attorney fees for this appeal.

AFFIRMED.