FILED
NOV 27 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-393 / 88-1432

IN RE THE MARRIAGE OF ROBERT L. GILMORE AND DORIS L. GILMORE

156

Upon the Petition of
ROBERT L. GILMORE,

Appellant,

And Concerning
DORIS L. GILMORE,

Appellee.

Appeal from the Iowa District Court for Jasper County, Jerrold W. Jordan, Judge.

Petitioner appeals from the district court's refusal to modify a dissolution decree. He asks that his child support and alimony obligations be reduced. He also contends the district court erred by directing him to contribute toward the respondent's attorney's fees. **AFFIRMED AS IN PART AND REVERSED IN PART.**

Lee M. Walker and Eugene Knopf of Walker, Knopf & Billingsley, Newton, for the petitioner-appellant.

Daniel E. Jacobi of the Rosenberg Law Firm, Des Moines, for the respondent-appellee.

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

DONIELSON, P.J.

The parties' marriage was dissolved and a dissolution decree was filed on February 15, 1988. The decree directed Robert to pay Doris child support of $60 per week for their minor child and rehabilitative alimony of $250 per week for five years. The alimony award was to increase to $300 per week if the child support obligation terminated before the end of the five-year period.

One month later, on March 15, 1988, Robert filed an application to modify the dissolution decree. He sought a reduction of his child support and alimony obligations. He alleged his income from his new position was not sufficient to make the required payments.

At the hearing on his application, held five and one-half months later, Robert contended his physical injuries and the bankruptcy of his employer rendered him unable to make the court-ordered alimony and child support payments. The trial court rejected his arguments and concluded he had failed to demonstrate a material change in circumstances which was not within his control.

Robert has appealed the trial court's decision. He contends he is entitled to a modification because he has become unemployed since the dissolution decree. He asserts he lost his $43,000-per-year job as a truck driver because of a back injury and also because of the financial troubles of his former employer. He asserts his back injury and his

poor education leave him unqualified for most jobs, and he asserts he has been unable to find employment in the narrow range of jobs which are open to him. In response, his ex-wife questions the severity of his back injury and suggests Robert is able to work but has made little effort to find a job.

In addition to requesting a reduction in his child support and alimony obligations, Robert also contends the district court erred by directing him to contribute $500 toward Doris' attorney's fees.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, we give weight to the factual findings of the trial court but we are not bound by them. Iowa R. App. P. 14(f)(7). 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 Vetternack, 334 N.W.2d 761, 762 (Iowa 1983).

The modification of dissolution decrees is provided for in section 598.21(8), Iowa Code (1987). Modification is allowed only if there is a substantial change of circumstances. The burden of proof rests upon the party seeking modification to establish such a change of circumstances by a preponderance of the evidence. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987).

The record in this case reveals Robert was off work for five months between September 1987 and February 1988 due to an injury. When he was cleared in January to resume his employment, he chose to return to a different job classification which paid less than his previous job as an over-the-road truck driver. Shortly after his return to work, Robert suffered another injury. He collected workers' compensation until August 1988. Due to his employer's decision to file for bankruptcy, Robert believed he would no longer receive any workers' compensation benefits, and at the time of the modification hearing, he was hoping to obtain unemployment compensation.

The record in this case reveals Robert has sustained an injury which impairs his ability to work. Furthermore, his employer has filed for bankruptcy and Robert's employment outlook is bleak. The change in circumstances in this case warrants a reduction in his alimony obligation to $750 per month.

Robert challenges the trial court's award of attorney fees to Doris. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). We cannot

find the trial court abused its discretion in this matter. The decision of the trial court is affirmed.

AFFIRMED IN PART AND REVERSED IN PART.