FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LINDA LEA NICHOLS AND MARK RAY NICHOLS

Upon the Petition of )
LINDA LEA NICHOLS, ) 219
Petitioner-Appellant, ) Filed November 30, 1987
And Concerning )
MARK RAY NICHOLS, ) 7-494 / 87-185
Respondent-Appellee. )

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Appeal from the Iowa District Court for Polk County (No. CD 37-21714), Rodney Ryan, Judge.

Petitioner former wife appeals from the order granting her application for modification of the 1982 decree dissolving the parties' marriage. **AFFIRMED.**

Nolden Gentry and Douglas F. Staskal of Brick, Seckington, Bowers, Swartz & Gentry, Des Moines, for appellant.

Thomas R Isaac of Thomas R. Isaac Law Office, Des Moines, for appellee.

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

**PER CURIAM** 220

Petitioner former wife appeals from the order granting her application for modification of the 1982 decree dissolving the parties' marriage. We affirm.

The marriage of petitioner, Linda Lea Nichols, and respondent, Mark Ray Nichols, was dissolved in February 1982. The dissolution decree awarded Linda custody of the parties' two children (Gary, born in 1979, and Darcy, born in 1980) and directed Mark to pay child support of $40 per week. It also directed Mark to furnish Linda with a television set to replace the one the parties had owned and which Mark had sold before the decree was entered.

On April 24, 1986, Linda filed an application for modification of the decree. She asked (1) that her child support award be increased, and (2) that Mark be directed to pay her for the television set because he had not given it to her. Mark answered the application for modification.

Hearing was held. There was testimony regarding the television set and the parties' financial conditions at the time of the dissolution decree and now. During the hearing, Mark testified that he would like to claim one of the parties' children as an income tax dependency exemption.

On January 21, 1987, the trial court entered a ruling which (1) increased Linda's child support award to $60 per week, effective the following week, for five years, and to $80 per week thereafter; (2) allowed Mark to claim Gary as an income tax dependency exemption; and (3) directed Mark to either return the television set to Linda or pay her $250 by March 1, 1987. Linda has appealed from the trial court's ruling.

Our scope of review is de novo. Iowa R. App. P. 4. The authority of our courts to modify dissolution decrees is grounded in both statute and the cases. Iowa Code section 598.21(8) (1985), as amended by Act of May 23, 1985, chapter 178, section 7, states that "[t]he court may subsequently modify orders made

under this section [dealing with, inter alia, child support payments] when there is a substantial change in circumstances." See Iowa Code § 598.21(8) (1987). We are guided in our application of this authority by a number of principles which have emerged from our cases. The change must be material and substantial and must occur after the entry of the decree. In re Marriage of Jensen, 251 N.W.2d 252, 253-54 (Iowa 1977). It must appear that continued enforcement of the original decree would, as a result of the changed circumstances, result in positive wrong or injustice. Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978). The change in circumstances must be permanent or continuous rather than temporary. In re Marriage of Mayer, 347 N.W.2d 681, 683 (Iowa App. 1984). The change in circumstances must not have been within the contemplation of the trial court when the original decree was entered. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974). The district court is granted 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. E.g., In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983) (application to modify child support provisions); Norenberg v. Norenberg, 168 N.W.2d 794, 797 (Iowa 1976) (application to modify visitation).

I. Linda contends the trial court should have increased her child support award more than it did. The trial court found Mark's gross earnings increased from $10,460 in 1982 to $19,214 in 1986, an increase of 83.69%. The trial court increased Mark's child support obligations from $40 per week to $60 per week beginning January 30, 1987, and further increased the sum to $80 per week beginning January 31, 1992.

Iowa Code section 598.21(8) (1985) recites those factors to consider in analyzing claims for modification of a decree's support provision, which include changes in the employment, earning capacity, income or resources of a party.

Application of those factors to the evidence in this case supports the trial court's child support increase.

**II.** Linda alleges that the trial court should have made the child support increase retroactive to the date she filed her application for modification. The trial court held it lacked authority to make payments retroactive "unless specifically pleaded." A review of Linda's petition to modify discloses that no such request was made for retroaction to apply. We affirm the trial court in this respect.

**III.** Linda argues that the trial court should not have allowed respondent former husband to claim one of the parties' two children as an income tax dependency exemption. Linda claims that inclusion of the provision by the trial court allowing Mark to claim one child as a dependent on his tax return was not put into issue by the pleadings.

Mark testified that he desired to claim one of the children as a dependent on his income tax returns. We find that since Mark's child support obligations increased, it was within the court's discretion to give Mark the dependency exemption.

**IV.** Linda's last argument on appeal is that the trial court should have required respondent former husband to pay her for the television set he was to have furnished her under the dissolution decree rather than allowing him the option of giving her the set or paying her for it.

In the original decree, Mark was to deliver a television to Linda within one year from when the decree was entered to replace the one the parties owned and which Mark sold. Mark has never given Linda the television, nor does he now have the television in his possession. The trial court ordered Mark to pay Linda the sum of $250. We decline to disturb the court's ruling in this regard.

Accordingly, we affirm the trial court in all respects.

Costs are taxed equally to the parties

**AFFIRMED.**