IN THE COURT OF APPEALS OF IOWA

IN RE: THE MARRIAGE OF CONNIE LEE BURRESS and DONOVAN KEITH BURRESS

Upon The Petition of	)	
CONNIE LEE BURRESS,	)	Filed January 28, 1977
Appellant,	)	
And Concerning	)	
DONOVAN KEITH BURRESS,	)	30 / 2-57950
Appellee.	)	
	)	

Appeal from Harrison District Court - E. F. Hanson, Judge

Petitioner appeals from modification of child support. Reversed and remanded.

Gary J. Altwegg, of Murray, Altwegg & Anderson, of Logan, for appellant.

John W. Kellogg, Jr., of Kellogg & Kellogg, of Missouri Valley, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

FILED
JAN 28 1977
CLERK SUPREME COURT

ALLBEE, C.J.

Petitioner Connie Lee Burress appeals trial court's order modifying respondent's child support obligations. The central issue is whether respondent Donovan Keith Burress established by a preponderance of evidence a material and substantial change of circumstances following the dissolution decree sufficient to warrant reduction of his child support obligations. Principles of law applied in this de novo review are recited in Mears v. Mears, 213 N.W.2d 511, 514-516 (Iowa 1973).

The marriage was dissolved by decree entered June 11, 1973. Pursuant to stipulation of the parties, Connie was awarded custody of their three children and Donovan ordered to pay $66.66 support monthly for each child. Eighteen months later, on December 4, 1974, Donovan applied for reduction of child support. In his application Donovan stated that at the time of the decree he had income sufficient to meet the child support payments but subsequently became unable to pay the support ordered. Following hearing on Donovan's application, the decree was modified by reducing his support obligations to $50 per month for each child.

At the hearing held December 16, 1974, Donovan testified his "take-home" pay prior to August 1974 was $500 a month. During August 1974 he was on strike; the record does not disclose the duration of the strike. He acknowledged receiving a 10% raise in wages following the strike, however his incentive and overtime pay had decreased resulting in less income.

In a financial statement filed December 4, 1974, Donovan declared under oath his net monthly income as $486 from a gross of $718. He testified that during the six weeks prior to hearing his weekly income averaged $120.19; and his monthly average was $520.42. The record is silent on whether these

figures were net or gross.

During November 1973 Donovan remarried. At the time of hearing, his new wife was expecting a child in January and unable to continue employment she held until September 6, 1974.

Consistent with his financial statement, Donovan claimed average monthly expenses of $430.98 for house trailer payment, lot rent, food, medical, clothing, utilities and automobile transportation. The financial statement also listed debts, which totaled $643.61, and an installment payment to a credit union. The record is not clear, but apparently the credit union installments were withheld from his gross wages. Donovan also testified to other indebtedness remaining from his marriage to Connie, including a doctor bill and a contract for a set of encyclopedias, together exceeding $700. Some of his creditors were threatening legal action.

Meanwhile, Connie also had remarried and terminated her employment maintained at the time of the decree. She testified the children needed her at home and that one child required special attention and medication for hypertension. She stated the expense of providing the needs for the children had increased causing continued reliance on Donovan's child support payments to meet expenses. At the time of hearing her husband by remarriage earned a modest income, clearing around $129 for a 54-hour workweek. He paid $65 a month support for each of his two children by a previous marriage. She estimated their average monthly living expenses as $247.60, not including her husband's child support payments. She also paid $29 a month on a debt incurred during her marriage to Donovan with a remaining balance of about $500. The children are provided health insurance coverage as a fringe benefit of Donovan's employment.

The issue to be resolved here is difficult. Both parties advance persuasive argument for their position.

Trial court did not make written findings of fact or law. Following the testimony, trial court commented: "The Court feels that there has been some change of circumstances in both instances, ..." and announced an intention to reduce the child support obligations. The written order modifying the support obligations merely states the application for modification was justified.

It is notable that trial court at no time made the requisite finding of material and substantial change of circumstances, nor do we believe he could do so.

We recognize Donovan's remarriage has caused him financial hardship. Remarriage, however, does not alone provide grounds for modification. Smith v. Smith, 254 Iowa 1120, 1122, 120 N.W.2d 448 (1963). Admittedly, Connie's circumstances are more comfortable. She no longer maintains employment, giving the children the advantage of a full-time mother. See In re Marriage of Beeh, 214 N.W.2d 170, 174 (1974); In re Marriage of Zoellner, 219 N.W.2d 517, 525 (1974). But she requires support money to provide for the needs of their three children.

Nor does our examination of the record reveal any change in condition between the date of the original decree and the time of hearing on Donovan's application such as warranted reduction of the child support. Donovan failed to meet his burden of proof.

Trial court's order reducing Donovan's child support obligations is reversed and this cause remanded to the district court for entry of an order in conformance with this opinion.