IN THE COURT OF APPEALS OF IOWA

No. 9-623 / 89-687

IN RE THE MARRIAGE OF RITA C. OLSON AND JERRY A. OLSON

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Upon the Petition of

RITA C. OLSON,

Appellant,

And Concerning

JERRY A. OLSON,

Appellee.

FILED
MAR 27 1990
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clay County, James L. McDonald, Judge.

Rita Olson appeals a district court order rejecting her petition for modification. **AFFIRMED.**

Bradley Howe of Sackett, Sackett & Howe, P.C., Spencer, for appellant.

Donald A. Beneke, Pocahontas, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ. Sackett, J., takes no part.

PER CURIAM

The question in this appeal is whether the trial court was correct in its refusal to modify a dissolution decree to provide for an award of child support. We find appellant has failed to meet the burden required for modification. We affirm.

The marriage of Rita Olson and Jerry Olson was dissolved by decree on May 24, 1982. Two children were born of this marriage, Anton in October 1974 and Linnea in November 1976. On the same date, the marriage of Susan Samuelson and Lowell Samuelson was dissolved by decree. Two children were born of this marriage, Deanna in May 1969 and Julie in February 1972. Subsequent to these two dissolution actions, Jerry married Susan and Rita married Lowell.

Pursuant to the 1982 Olson dissolution decree and stipulation by the parties, joint custody of the two minor children was awarded to the parties. Neither party was obligated to pay child support but Jerry was obligated to provide medical insurance for the children and pay all uninsured medical expenses. Since the dissolution, the two minor children have resided with Rita. Since the Samuelson's dissolution, the two minor children from that marriage have resided with Lowell and Rita. Susan was not obligated to pay child support.

Jerry had been a Lutheran minister during the marriage. After the dissolution, Jerry left the ministry. He is currently employed at a vocational school in Minneapolis. Jerry's wife, Susan, also works in a school in Minneapolis. No children have been born of this marriage.

Rita's husband, Lowell, has continued to farm. Lowell's income has recently improved but Lowell and Rita lost a portion of their farm through foreclosure during the farm crisis. Rita works as a part-time librarian in Pocahontas. One child has been born of this marriage.

On October 31, 1988, Rita filed an application for modification of dissolution decree. Claiming a change in circumstances, Rita sought child support from Jerry for the parties' two minor children and an award of attorney fees for this action.

Following a hearing, the district court entered its decree regarding modification. Finding no material change in circumstances, the court denied Rita's petition for modification. Rita has filed this appeal.

Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our

decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

The basic rule required to modify a dissolution decree is a material and substantial change in the condition or circumstances of the parties must have occurred since the dissolution. This was aptly expressed by our court in the case of In re Marriage of Mayer, 347 N.W.2d 681 (Iowa App. 1984), as follows:

> Such changed conditions must be such as were not within the knowledge or contemplation of the court when the former decree was entered, and a modification should be based upon a change of circumstances more or less permanent or continuous, not temporary. (Citations omitted.)

Id. at 683.

We have considered the criteria set out in Iowa Code sections 598.21(4) and (8). It is well established that both parents have a legal obligation to support their children. Iowa Code § 598.21(4); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). Upon our review of the record in this case, we find Rita has not met the burden of showing a substantial change in circumstances. See In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987). The district court concluded:

> Both parties are responsible for the support of their children to the extent of their

> respective abilities. The evidence disclosed that the Petitioner has more resources available to her at the present time than she had at the time the original decree was entered. The Respondent's resources are about the same. The fact that the Respondent disposed of the residence owned by the parties and received by him as part of the property settlement between the parties and no longer has the burden of paying the installment payment was certainly within the contemplation of the parties at the time of the divorce and does not constitute a material change in circumstances that would warrant modification. His career change has not resulted in any substantial increase in his net annual income. The fact that his present wife would be steadily employed was certainly within the contemplation of the Court at the time the original decree was entered.

We agree with the analysis of the district court. Consequently, we affirm the trial court's denial of modification.

Rita also contends the district court erred in denying her request for attorney fees. 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. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

We affirm the district court's denial of Rita's request for attorney fees.

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Rita also seeks 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 Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Hayne, 334 N.W.2d 347, 353 (Iowa App. 1983); In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Guided by these general legal principles, we find that each party shall be responsible for his or her own attorney fees. Court costs are taxed to Rita.

AFFIRMED.