FILED
MAY 26 1981
CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

IN RE MARRIAGE OF WILLIAM F. SHORT AND MARLENE C. SHORT

Upon the Petition of )
**WILLIAM F. SHORT,** )
Petitioner-Appellant. )
)
And Concerning )
**MARLENE C. SHORT,** )
Respondent-Appellee. )

Filed May 26, 1981

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2-64835

Appeal from Lee District Court. D. B. Hendrickson, Judge.

*Petitioner-husband appeals from trial court's disposition of his application to modify the parties' dissolution decree.* AFFIRMED.

Ted V. Ruffin of Ruffin, Mitchell, Kimm & Assoc., Cedar Rapids, Iowa, for petitioner-appellant.

Thomas C. Younggren, of Norman, Younggren & Webber, Keokuk, Ia., for respondent-appellee.

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

**PER CURIAM**

Petitioner-husband appeals from trial court's disposition of his application to modify the parties' dissolution decree. He claims that changes in the parties' relative economic positions justify the elimination of the wife's alimony award and that he should be credited for amounts expended for college expenses of two of the children. Our review is de novo. Iowa R. App. P. 4. We affirm.

The twenty-two year marriage of William and Marlene Short was dissolved by decree on November 12, 1974. William was ordered to pay $100 per month in support for each of his three children who were minors at that time (the other children had already reached their majority) and $150 per month as alimony to Marlene. As the support obligation for each of the three younger children ceased, the alimony award was to be increased $50 per month. In response to Marlene's later application to cite William for contempt for nonpayment of support, he filed on May 23, 1979 a petition to modify the decree. He alleged that the facts that Marlene now has outside employment receiving $940 per month and his business has suffered severe financial reverses constitute a substantial change in circumstances warranting modification of the alimony decree. He also claims that he was entitled to credits against his future obligations under the decree for having expended $4,000 toward the college expenses of two of the three younger children.

On January 2, 1980, the trial court determined that William should not be cited for contempt; Marlene does not appeal that ruling. As for William's application to modify, the court eliminated the portion of the decree relating to the increase in alimony which was to follow each cessation of the child support obligations. The basis for this modification was Marlene's increased income and not William's projected decrease in income since he was himself unsure of his future employment and income. In response to William's subsequent motion for enlargement of findings, the court refused to give him credit for payments for college expenses not required by the decree. He then brought this appeal.

I. William first argues that the relative changes in the parties' economic situations require the complete elimination of his alimony obligation instead of the partial change ordered by the trial court. As petitioner in this action, he has the burden of proving, by a preponderance of the evidence, a material and substantial change in

circumstances since the date of the original decree such that modification is justified. Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). "Modification should be based upon a change of circumstances and more or less permanent or continuous, not temporary, and where a change of financial condition of one or both of the parties is relied upon, it must be substantial." Spaulding v. Spaulding. 204 N.W.2d 634, 635 (Iowa 1973).

We agree with the trial court that William has not sustained his burden of proof. At the time of hearing, William was receiving $400 per week from the business. While it is true that he testified his business would probably close on March 1, 1980 and that he would have post-liquidation personal debts of at least $40,000, he was unable to say with certainty what his future employment and income situation would be. On this record we cannot conclude that Marlene's alimony award should be wholly eliminated; the trial court's disposition of this issue should be affirmed. Our holding is, of course, without prejudice to William's right to bring a future application to modify if it happens that he is in fact unable to obtain future employment and income sufficient to meet his own expenses and his obligations under the decree.

II. William further argues that his payment of $4,000 toward the college expenses of his two younger sons should be credited against his future alimony and support obligations. We disagree. It is undisputed that there was no agreement or understanding between the parties that William would be entitled to such a credit for those payments which were not required by the decree. The trial court properly applied the general rule that, under these circumstances, credits are not to be allowed. 27B C.J.S. Divorce §321(1) (1959) at p. 637; see also Tescher v. Tescher, 491 P.2d 82, 84 (Colo. App. 1971). The rational for this rule was well stated in Ross v. Ross, 592 P.2d 600, 603-04 (Utah 1979):

> "Plaintiff is not entitled, however[,] to credit for expenditures made on behalf of the children or defendant which do not specifically conform to the terms of the decree. To do so would permit plaintiff to vary the terms of the decree and to usurp from defendant the right to determine the manner in which the money should be spent. Only if the defendant has consented to the plaintiff's voluntary expenditures as an alternative manner of satisfying his alimony and child support obligation, can plaintiff receive credit for such expenditures." (footnotes omitted).

William's claim for credit was properly denied.

We find no reason to disturb the conclusions of the trial court and therefore affirm its judgment.

AFFIRMED.