FILED
OCT 23 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LINDA K. MILLEN AND JAMES R. MILLEN

UPON THE PETITION OF **LINDA K. MILLEN,**	)	Filed October 23, 1984
Petitioner-Appellee,	)	
AND CONCERNING **JAMES R. MILLEN,**	)	4-394 / 84-559
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Des Moines County, William S. Cahill, Judge.

Respondent appeals from the trial court's denial of his application for modification of the property division in the decree dissolving the parties' marriage. AFFIRMED AND REMANDED WITH INSTRUCTIONS.

James R. Millen, Burlington, respondent-appellant, pro se.

T. K. Ford, Burlington, for petitioner-appellee.

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

Respondent, James R. Millen, appeals from the trial court's denial of his application for modification of the property division in the decree dissolving the parties' marriage. He claims that his unemployment, the reduction in the value of assets awarded to him, and the sale -- at a reduced price -- of an interest in Colorado property constitute substantial changes in circumstances which justify a modification of the property division. Petitioner, Linda Burns, the former wife, asks for attorney fees on this appeal.

James's application for modification also claimed that there were "inadvertent and evident mistakes in the decree" of dissolution in the original proceedings. He does not present argument upon the effect of such claimed inadvertencies. We consider only those issues preserved and urged upon appeal. Assuming, however, that James has properly presented the issue for our determination, his claims for relief as a result of alleged mistakes or omissions must fail in this modification action.

The record fails to show that James raised any claim of inequity in the division of property by timely action in any of the ways provided by the Iowa Rules of Civil Procedure. There is no record of him filing a rule 179(b) motion to expand and modify the trial court's findings of fact and conclusions of law in the dissolution proceedings or of him filing a motion for new trial pursuant to rule 244, Iowa Rules of Civil Procedure. No appeal was taken from the decree entered by the trial court, and there was no petition to vacate or modify the decree, as provided by rule 252, Iowa Rules of Civil Procedure. James apparently accepted the provisions of the decree as an equitable division of property until he brought the present action to modify those provisions.

James has not shown the proper grounds for modifying the property division. The legislature did not intend that the statutory modification on change of circumstances applies to property divisions made in a dissolution decree. In re

Marriage of Knott, 331 N.W.2d 135, 137 (Iowa 1983). Provisions of a property division in a dissolution decree are not subject to modification under the authority of the statute authorizing modification of dissolution decrees upon a change of circumstances in the absence of fraud, duress, coercion, mistake or other grounds as would justify the setting aside or changing of a decree in any other case. Id. at 136. Inequitable property division in a dissolution decree should be corrected by an appeal. Thereafter, property rights ought to be accorded some permanency. Id. at 137.

James's application for modification of the property division of the dissolution decree because of a substantial change of circumstances cannot lie. In addition, we do not find that there existed mistakes of such a nature, or any other grounds for vacating or modifying the decree under the provisions of rule 252, Iowa Rules of Civil Procedure. The ruling of the trial court, dismissing respondent's application for modification of the property division, must be affirmed.

Linda seeks an award of attorney fees for this appeal. The recently adopted section 598.36 of the Iowa Code allows an award of attorney fees to the prevailing party in a proceeding to modify an order or decree. Iowa Code § 598.36, 1984 Iowa Legis. Serv. No. 4 at 201 (West).

We have determined that such fees are allowable by the trial court, in cases pending on modifications in the district courts, and by the appellate courts in cases pending upon appeal. Under the circumstances of the record in this case, we award attorney's fees of $800 for this appeal.

The judgment affects only James's obligation to reimburse Linda for attorney fees; it does not relieve Linda of her responsibility to pay for reasonable attorney fees in excess of $800.

AFFIRMED AND REMANDED WITH INSTRUCTIONS.