IN THE COURT OF APPEALS OF IOWA

No. 0-660 / 00-342
Filed December 22, 2000

IN RE MARRIAGE OF JOAN EILEEN STAEBELL AND VINCENT GERALD STAEBELL

FILED
DEC 2 2 2000
CLERK SUPREME COURT

Upon the Petition of
JOAN EILEEN STAEBELL,
Petitioner-Appellee/Cross-Appellant,

And Concerning
VINCENT GERALD STAEBELL,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

The respondent appeals, and petitioner cross-appeals, from a district court order partially granting respondent's petition to modify the alimony provision of their dissolution decree. **AFFIRMED.**

D. Raymond Walton of Burk & Walton, Waterloo, for appellant.

Ronald J. Pepples, Parkersburg, for appellee.

Considered by Sackett, P.J., and Zimmer and Miller, JJ.

ZIMMER, J.

Respondent Vincent Staebell appeals, and petitioner Joan Staebell cross-appeals, from a district court order modifying Vincent's alimony obligation. Vincent argues the court should have eliminated the alimony provision entirely, along with a provision requiring him to maintain Joan as the beneficiary of his life insurance policy. In her cross-appeal, Joan contends the alimony award should not have been reduced and she seeks trial and appellate attorney fees. We affirm.

Joan and Vincent married in 1966. Their marriage was dissolved on May 22, 1990. At the time of dissolution, Vincent's gross monthly income from his employment at John Deere was $4,495. The dissolution decree required Vincent to pay Joan $1200 per month in permanent alimony due to the length of the marriage and her primary status during the marriage as a homemaker. The decree also required him to name Joan as the beneficiary of a $40,000 life insurance policy. Vincent appealed only the alimony provision of that decree but was unsuccessful in lowering the amount.

In 1993, Vincent instituted a modification proceeding and successfully reduced his alimony obligation to $900 per month. The record does not reveal the reason for this first modification. In February 1998, a second modification order further reduced Joan's alimony to $600 per month. In the second proceeding, the district court found a substantial change in circumstances in Vincent's life due to his retirement from John Deere, and consequently a reduction in income, and health problems which left him unable to maintain full-time employment.

Based on his deteriorating physical condition, Vincent instituted a third modification action in July of 1999, seeking a complete elimination of his alimony obligation to Joan and his requirement to maintain her as the beneficiary of his life insurance policy. He had remarried a short time before and sought to name his current wife as the beneficiary of the policy. After the January 2000 modification hearing, the district court reduced Vincent's alimony obligation to $300 per month. The court declined to alter the life insurance provision.

Vincent now appeals. He contends the district court erred by failing to eliminate his alimony obligation and the requirement that he name Joan as the beneficiary of his life insurance policy. Joan cross-appeals, asserting the district court should not have reduced alimony and it erred in denying her trial attorney fees. She also seeks appellate attorney fees.

I. Scope of Review. We review de novo proceedings to modify the alimony provision of a dissolution decree. *In re Marriage of Sjulin,* 431 N.W.2d 773, 776 (Iowa 1988); *Wernli v. Wernli,* 216 N.W.2d 322, 323 (Iowa 1974). We give weight to the findings of the trial court but are not bound by them. *Sjulin,* 431 N.W.2d at 776. Our duty is to examine the entire record and adjudicate rights anew on those questions properly presented. *Id.* The burden is on the party seeking modification of a dissolution decree to prove a substantial change in circumstances from the time the decree was entered. *Id.*

II. Modification of Alimony. The district court found Vincent's medical expenses significantly increased since the 1998 modification, representing a substantial change in circumstances. After a de novo review of the record, we agree with the district court. Vincent has suffered from emphysema and high

blood pressure for many years. However, these conditions worsened, in a manner not contemplated at the time of the 1998 modification. In 1998, Vincent was only taking two medications for his hypertension. His 1998 statement of expenses revealed a monthly income of $1,800 and no monthly medical bills. At the January 2000 hearing, he submitted proof that he currently requires many more medications but earns approximately the same monthly income ($1,997). Since the 1998 modification order, significant noncovered medical expenses were also incurred for increased doctor's office visits and a trip to the emergency room. We affirm the reduction of alimony to $300 per month.

We also agree the alimony award should not be eliminated entirely. The purpose of the alimony award in the original decree was to recognize Joan's long-term role as homemaker during the marriage and remedy her resultant limited earning capacity and the disparity in the couple's incomes. This purpose has not been alleviated. Joan currently works part time at Younkers department store. At the time of the hearing, Joan earned approximately $1,436 per month, including spousal support. Therefore, we decline to disturb the trial court's reduction of the alimony to $300 per month.

III. Life Insurance. The original dissolution decree required Vincent to maintain $40,000 in life insurance benefits and name Joan as the beneficiary. He did not challenge this part of the original order until he filed his July 1999 modification action. The district court found that this part of the original decree was merely an obligation to name Joan as the beneficiary. The court also found this life insurance policy was a benefit of Vincent's employment and did not cost him anything to maintain it. Therefore, the court reasoned that any change in

Vincent's economic circumstances could not affect the life insurance provision of the original decree. Vincent contends the life insurance provision in the original order was unauthorized in light of our decision in *In re Marriage of Lytle*, 475 N.W.2d 11 (Iowa App. 1991), and should be reduced or eliminated.

We agree with the district court. A modification of a dissolution decree must be premised on a substantial change in circumstances. The record clearly reveals that Vincent's life insurance policy is a benefit of his John Deere employment and costs him nothing to maintain. Therefore, even though there has been a substantial change in Vincent's economic situation, this is not a condition which affects the life insurance provision of the original decree. Vincent simply wishes to make his current wife the beneficiary of that policy. However, as the district court pointed out, there is "no reason why a benefit which was acquired during the parties' marriage and distributed when that marriage was dissolved should now inure to the benefit of [Vincent's] current spouse."

Furthermore, the legality of the provision cannot be attacked collaterally in a modification proceeding. Vincent never appealed this portion of the original decree. A modification action is not the correct vehicle for Vincent's current attack on the provision's illegality. As the district court pointed out during the hearing, "in a sense, that ship has sailed. I just still have to look at the relative needs and relative abilities of the people compared to what they were at the time of the last order."

Vincent cites *In re Marriage of Lytle* to support his argument that the provision is illegal and can be attacked in this proceeding. He makes much of the fact that *Lytle* was issued by this court one month before its decision on the

appeal of the Staebells' original 1990 decree and *Lytle* invalidated a similar life insurance provision. Even if the case were applicable (and we do not conclude that it is) and the life insurance provision is illegal, the prior appellate decision became the law of the case. Vincent did not seek further review of our decision in the supreme court. The res judicata consequences of a final unappealed judgment are not altered by the fact that the judgment may have rested on incorrect legal principles. *In re Petition of Bisenius,* 573 N.W.2d 258, 260 (Iowa 1998). We affirm the district court's decision not to modify the life insurance provision.

IV. Trial and Appellate Attorney Fees. Joan contends the trial court erred in declining to award her trial attorney fees. She also seeks appellate attorney fees.

Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Okonkwo,* 525 N.W.2d 870, 874 (Iowa App. 1994) (citation omitted). To overturn an award, the complaining party must show that the trial court abused its discretion. *Id.* Awards of attorney fees must be for fair and reasonable amounts, and based on the parties' respective abilities to pay. *Id.* (citations omitted). Here the district court required each party to pay his or her own attorney fees. Both parties have limited resources. We find no abuse of discretion in this decision.

The award of appellate attorney fees is not a matter of right but rests within this court's discretion. *In re Marriage of Will,* 602 N.W.2d 202, 206 (Iowa App. 1999). We will weigh the requesting party's financial needs and the other

party's ability to pay. *Id.* We conclude Joan is not entitled to an award of appellate attorney fees for the same reasons.

AFFIRMED.