

FILED

AUG 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT C. SCHOLL AND MARTHA A. SCHOLL

359

Upon the Petition of)

ROBERT C. SCHOLL,)

Petitioner-Appellant,)

And Concerning)

MARTHA A. SCHOLL,)

Respondent-Appellee.)

Filed August 29, 1985

5-347
84-1824

Appeal from the Iowa District Court for Cass County - Leo F. Connelly,
Judge.

Petitioner husband appeals from an order modifying the dissolution decree to increase his child support obligation contending he is unable to pay the higher amount. **AFFIRMED AS MODIFIED.**

Martin L. Fisher of Fisher, Fisher & Fisher, Adair, Iowa, for petitioner-appellant.

Roland K. Landsness of Cambridge, Feilmeyer, Landsness, Chase, Anderson & Wells, Atlantic, Iowa, for respondent-appellee.

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

Petitioner husband appeals from an order modifying the dissolution decree to increase his child support obligation. He contends that he is unable to pay the higher amount. We affirm as modified.

Robert and Martha Scholl were married in 1972. They have three minor children.

During most of the marriage Robert was a farmer. However, his farming operation was heavily ridden by debts and failed completely in early 1984. Since then he has been employed as a part-time truck driver with an average net income of about \$560 per month. He asserts that he is unable to find better employment because of learning disabilities resulting from brain damage suffered in childhood.

Martha works in a K-Mart store and receives food stamps. She reported a total net income from these sources of \$167 per week or \$724 per month.

The parties' marriage was dissolved in March 1984. Martha received custody of the children and Robert was directed to pay child support totaling \$375 per month. The court, however, noted Robert's "cash flow problem" and temporarily abated one-third of the child support obligation.

In April 1984, Robert filed an application to modify the decree. The court determined that there had been a substantial change in circumstances and reduced child support payments to a total of \$120 per month. The court further stated that Robert would not be liable for any child support for the period between the application for modification and the entry of the court's order in July 1984. The order provided for a hearing in October 1984 for the purpose of determining if supplemental modification would be necessary.

Following the October hearing, the court increased Robert's child support obligation to \$100 per month per child. Robert has appealed from this determination.

Our review of the trial court's order is de novo. Mears v. Mears, 213 N.W.2d 511, 515-16 (Iowa 1973). "Nevertheless the trial court has considerable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983).

Child support awards may be subsequently modified "when there is a substantial change in circumstances. The court contemplating a change in child support because of alleged change in circumstances shall consider each parent's earning capacity, economic circumstances and cost of living." Iowa Code § 598.21(8) (1985). The circumstances must not have been within the contemplation of the trial court when the original decree was entered. In re Marriage of Vetternack, 334 N.W.2d at 762.

We have reviewed the record before this court and conclude that the child support obligation is excessive. It is apparent that Robert has had financial difficulties since the original decree was entered. He lost his farm and incurred unforeseen medical expenses. While Robert has secured employment as a truck driver, it is only on a part-time basis. Pursuant to the trial court's modification, Robert would have to contribute over half his income to the support of his children, leaving him with less than \$300 per month for living expenses. We believe that such a result is inequitable. Accordingly, we reduce the child support obligation to \$75 per month per child.

AFFIRMED AS MODIFIED.