

IN THE COURT OF APPEALS OF IOWA

No. 2-541 / 92-301

FILED

MAY 04 1993

CLERK SUPREME COURT

IN RE THE MARRIAGE OF PAMELA J. KING AND
WAYNE A. KING

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Upon the Petition of
PAMELA J. KING,

Appellee,

And Concerning
WAYNE A. KING,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County, Robert Mahan, Judge.

Husband appeals the district court's denial of his
application for modification of his dissolution decree.
MODIFIED.

Jay P. Roberts and Carter Stevens of Beecher, Rathert,
Roberts, Field, Fister, Walker & Morris, Waterloo, for
appellant.

Robert J. Dieter of Redfern, Mason, Dieter, Larsen &
Moore, Cedar Falls, for appellee.

Considered by Oxberger, C.J., and Donielson and
Sackett, JJ.

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SACKETT, J.

Respondent-appellant Wayne A. King appeals the trial court's refusal to modify his dissolution decree to decrease his child support obligation. We modify.

The marriage of petitioner-appellee Pamela J. King and Wayne was dissolved in February 1987. Physical care of Michelle and Alisha, the two children of the parties, was awarded to Pamela, and Wayne was ordered to pay child support of \$570 a month. In the summer of 1991, Michelle came to live with Wayne and in August 1991, he and Pamela signed an agreement that Michelle's physical care could be placed with him and that his obligation to pay child support to Pamela be reduced to \$250 a month. Their agreement was encompassed in a modification order entered by the district court on August 30, 1991.

At the time of the dissolution, Wayne was employed at the University of Northern Iowa as director of the Center for Academic Achievement in Cedar Falls, a position he had held for some time. In April 1991, Wayne had been forced to resign his position effective August 3, 1991. He was able to teach for a period of time at the University of Northern Iowa at a reduced salary.

On October 30, 1991, Wayne filed the application for modification from which this appeal was taken. He sought to reduce his child support obligation for Alisha because he had been terminated from all employment and his sole source of income was unemployment. The matter came on for

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hearing and the trial court denied his application finding he had known of his employment situation when the August 30, 1991 decree modifying the original decree had been filed, consequently, he had failed to show a change in circumstances justifying the modification.

Wayne appeals contending he had anticipated employment as a full professor at the time of the August 1991 modification order but that funding cuts at the University of Northern Iowa resulted in the job he had anticipated receiving not being created. He contends he has shown the requisite change of circumstances. He also contends it is unfair to the child in his custody to require him to continue to pay support to her mother for the child in her care when he receives no child support for the child in his care and his former wife's income is substantially greater than his.

The trial court in denying the application for modification found that until August 3, 1991, Wayne was employed at an annual salary of \$38,000 and in a letter to Pamela dated July 22, 1991, Wayne told her of his pending unemployment and the fact he might be able to pay only reduced or minimal child support. After he lost his original job, he was employed temporarily as an adjunct professor earning \$1300 a month, but the job had ended and he was drawing unemployment.

The trial court then concluded Wayne was aware on August 30, 1991, he might not receive full-time employment

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with the University of Northern Iowa and, therefore, there had not been a showing there was a substantial change of circumstances not contemplated by the parties or the court on August 30, 1991. The trial court denied Wayne's application for modification.

Wayne disagrees with these findings. We review de novo Iowa R. App. P. 4.

Wayne testified he resigned from his initial position with the University under pressure. He said that on August 30, 1991, when the first order modifying was filed, he expected to be hired as an Associate Professor in the Department of Educational Psychology. A job was available because of a late resignation. Wayne was qualified for the job and would have been given primary consideration for the position. A wage freeze at the University in September 1991 resulted in the position not being filled. Wayne did not receive the job, but was only hired as an adjunct professor for a semester at \$1300 a month.

Wayne said while the modification order in August 1991 only required him to pay \$250 a month as child support, it also required him to provide all the medical insurance coverage for both children. He advances his only source of income at the time of this hearing was unemployment insurance of \$219 a week. He had no medical insurance available to him. Pamela has a net monthly income of \$1520 a month.

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Pamela does not contend Wayne is not unemployed or his unemployment is his fault, rather, she contends he knew he was going to be unemployed in August 1991.

Wayne is unemployed and has lost his health insurance benefit. While Wayne had lost his current job at the time of the August 1991 hearing, we do not find on this record either he or Pamela or the trial court anticipated at that time that in the next six months his financial situation would become so bleak. The wage freeze at the University of Northern Iowa did not go into place until September 1991.

Modification of the support provisions of a dissolution decree is justified only if there has been a material and substantial change in the circumstances of the parties, financially or otherwise, making it equitable other terms be imposed. See Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa App. 1979). The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of the evidence. See Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). Circumstances that have changed, to justify modification of support, must be those that were not within contemplation of the trial court when the original decree was entered. See In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). Such changes must be more or less permanent or continuous, not temporary. See In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983).

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The knowledge of the trial court at the time the award is made is the basis for determining whether there has been a change of circumstances. See Full, 255 N.W.2d at 159; Leo v. Leo, 213 N.W.2d 495, 496 (Iowa 1973).

In In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987), the court said:

[C]urrent inability has become less a consideration and long-range capacity to earn money has become more of a consideration; and . . . voluntariness in diminished earning capacity has become increasingly an impediment to modification.

We find Wayne has shown that through no fault of his own his long-term economic picture has changed and his ability to contribute to the support of Alisha has severely diminished. Pamela has a substantially higher income than Wayne and, not only is she not making any contribution to Michelle's care, she continues to argue Wayne should be contributing to Alisha's care and paying her health insurance premiums as well. Having found there should be a modification, the child support guidelines should be applied. See In re Marriage of Bergfeld, 465 N.W.2d 865, 869-70 (Iowa 1991); In re Marriage of Titterington, 488 N.W.2d 176, 173 (Iowa App. 1992). Applying the guidelines, Pamela would owe Wayne more child support than Wayne owes her. Wayne, however, has not requested child support from Pamela. We find Wayne has no obligation to pay child support for Alisha until Michelle graduates from high school. Then, according to the

guidelines, Wayne shall pay child support in the amount of \$211 per month to Pamela for Alisha until she becomes eighteen and graduates from high school. We also find the decree should be modified to provide Wayne pay the health insurance only for the child in his care.

We award no attorney fees on appeal. Costs on appeal are taxed one-half to each party.

MODIFIED.