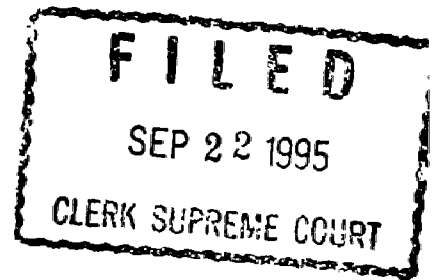


IN THE COURT OF APPEALS OF IOWA

No. 5-399 / 94-1597



**IN RE THE MARRIAGE OF WILLIAM R. MEYER
AND MARY ANN MEYER**

Upon the Petition of
WILLIAM R. MEYER,

Appellee,

And Concerning
MARY ANN MEYER,

Appellant.

Appeal from the Iowa District Court for Clinton County, John A. Nahra, Judge.

Respondent appeals a district court order granting petitioner's application for modification of his alimony obligation. **AFFIRMED.**

Robert L. Sudmeier and Norman J. Wangberg of Fuerste, Carew, Coyle,
Juergens & Sudmeier, P.C., Dubuque, for appellant.

Richard W. Farwell of Farwell & Bruhn, Clinton, for appellee.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

HUITINK, J.

This marriage was dissolved in 1980. At the time the decree was entered William was a forty-eight-year-old physician earning in excess of \$100,000 annually. Mary Ann was a forty-eight-year-old housewife without any significant employment skills. As a result, the court ordered William to pay \$800 monthly alimony to Mary Ann until she remarried.

In 1985 William's license to practice medicine was conditionally revoked based on allegations of professional misconduct. Since these allegations concerned alcohol abuse, the revocation was stayed pending completion of inpatient treatment and compliance with other probationary conditions. Additional allegations of substance abuse in May 1990 resulted in a ninety-day suspension with reinstatement conditional on William's compliance with specified requirements.

In December 1990 William's application for reinstatement was denied. He was informed that further applications would not be considered unless he completed at least thirty days in patient treatment for chemical dependency. William refused to attend the required treatment because he denied he had a substance abuse problem. He also claims the treatment would have lasted more than thirty days and would cost him \$20,000 to \$30,000 per month. In addition, William maintained it would cost him up to \$100,000 to obtain malpractice insurance and thousands more to fulfill his continuing medical education requirement.

As a result, William left the medical profession in 1991 to enter private business. He was employed as a managing partner of Highview Distributing Co. at an annual salary of \$28,000 until 1993 when his position was eliminated. William's income at the time this matter was tried was \$923 monthly social security. He reported assets valued at \$58,200 and \$500 annual investment income. Although his income ranged from \$250,000 as a physician to a low of \$28,000 at Highview since 1980, William has remained current on his alimony payments.

Mary Ann is now sixty-two years old. She relies on her earnings from minimum-wage jobs, investment income, and William's alimony for her subsistence. She will receive \$453 social security benefits beginning in May 1994. Her reported net worth is \$100,040.

The district court found William could no longer pay alimony as ordered because of his reduced earning capacity. Mary Ann's claim that William's reduced earning capacity was voluntary or self-inflicted was rejected. The district court concluded William could not return to his medical practice because of the impossibly stringent conditions imposed on his reinstatement. William's alimony obligation was reduced to \$50 per month. Mary Ann appeals. She argues William's reduced earning capacity was voluntary and it was error for the court to conclude otherwise. Mary Ann also seeks an award of attorney's fees resulting from the trial in district court and this appeal.

We review this equitable proceeding de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we do give them deference, particularly when the credibility of witnesses is implicated. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa App. 1992).

Modification of a dissolution decree is only permitted when there has been a substantial change in circumstances. Iowa Code § 591.21(8) (1993). The burden rests on the party seeking modification to establish a change of circumstances by a preponderance of the evidence. *Thayer v. Thayer*, 286 N.W.2d 222, 223 (Iowa App. 1979). Included among the many factors the court considers are changes in employment, earning capacity, income or resources, and changes in the mental or emotional health of a party. Iowa Code § 598.21(8)(a)(e) (1993).

We are guided in this determination by a number of well-established principles. These include: (1) There must be a substantial change in circumstances occurring after entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree or a result of the changed conditions would result in a positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered. *In re Marriage of Vetterneck*, 334 N.W.2d 761, 762 (Iowa 1983).

A self-inflicted reduction of income does not justify a reduction of one's alimony obligation. *In re Marriage of Van Doren*, 474 N.W.2d 583, 586 (Iowa App. 1991). Professional misconduct including criminal behavior resulting in a medical license revocation has been held to be self-inflicted. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987).

We cannot say, in view of the substantial financial consequences attending William's efforts to regain his medical license, that his decision to forego reinstatement is the kind of self-inflicted reduction of income which precludes modification. Even if we were to conclude otherwise, there are other circumstances justifying reduction of William's alimony obligations. Contrary to Mary Ann's claim, William's decision to forego reinstatement was not a "reckless disregard of his obligation to her." He, despite a dramatic reduction in income, continued to pay the full amount of his obligation for three years following the revocation. William did not seek modification until he lost his job at Highview and substantially depleted his assets by applying them to his alimony obligation.

Both parties have reached the age of retirement. Enforcement of William's original alimony obligation would not only deprive him of any meaningful retirement opportunity but would also compromise his subsistence. We do not find equity in requiring William to devote virtually all of his modest social security benefit to an alimony obligation based on a six-figure earning capacity he no longer possesses.

Although modification is not without consequence for Mary Ann, it will not result in unjust hardships for her. The loss of William's alimony will be mitigated in part by her receipt of social security benefits. It is not unfair for Mary Ann to share in the common and inevitable burdens of retirement under these circumstances. The district court is accordingly affirmed on this issue.

We have also considered Mary Ann's requests for attorney's fees. An award of attorney's fees is not a matter of right, but rests within the court's discretion and the parties' respective financial positions. *Kern*, 408 N.W.2d at 390. After considering the parties' respective financial circumstances, we conclude the district court did not abuse its discretion when it denied Mary Ann's request for attorney's fees. We also determine each party should pay his or her own appellate attorney's fees.

The district court is affirmed on all issues. Mary Ann shall pay the costs on appeal.

AFFIRMED.