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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-355 / 93-1856

IN RE THE MARRIAGE OF MARIAN ELANINE McCARVILLE and GERALD W. McCARVILLE

Upon the Petition of
MARIAN ELANINE McCARVILLE,

Appellee,

And Concerning
GERALD W. McCARVILLE,

Appellant.

Appeal from the Iowa District Court for Howard County, John Bauercamper, Judge.

Gerald McCarville appeals a modification of the parties' dissolution decree. **AFFIRMED.**

Christine L. Crilley of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

Steven C. Schrader, Decorah, for appellee.

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

HAYDEN, J.

Marian and Gerald McCarville's twenty-nine-year marriage was dissolved in July 1991. Among other things, Marian was awarded alimony of $500 per month for five years.

In February 1993 Gerald filed a modification petition alleging his income from farming had substantially decreased from an estimated $30,000 per year at the time of the original decree to $8,325 per year at the present time. He requested either elimination or reduction of his alimony obligation. Marian counterclaimed requesting alimony be continued beyond five years and made permanent. Marian's request was based on the fact she suffers from a prolapsed rectum, which means she does not have any control over her elimination process. Her medical condition prevents her from working full-time.

The trial court determined Gerald's income had substantially decreased. The trial court also stated another change in circumstances had occurred when Marian did not recover from a medical condition which reduces her employability. The court reduced Gerald's alimony obligation to $350 per month but extended it from five to fifteen years.

Gerald appeals. He contends the extension of his alimony obligation to fifteen years more than doubled the original alimony award. He claims it is unfair. Gerald also claims Marian's financial position was better while

his was worse; the original property division had left Marian with more income-producing assets; and the evidence did not show Marian is unable to work. We disagree. We affirm.

Our review in modification cases is de novo. Iowa R. App. P. 4. Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable 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 Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack and applied in Kern are applicable here as well:

> A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in 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.

Vetternack, 334 N.W.2d at 762.

The extension of the alimony award by the trial court from five to fifteen years is justified under the facts of the instant case. The trial court ruled Marian had not made a recovery from her medical condition which existed at the time of the dissolution, noting her outlook for improvement in her condition and employability was very poor. The original award of alimony was based on the expectation she would be able to find work within a short time after the dissolution of marriage trial. Our supreme court stated, "Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses." In re Marriage of Francis, 442 N.W.2d 59, 64 (Iowa 1989). Instead, Marian's physical condition has deteriorated since the dissolution trial. She has endeavored to work, but because of the necessity of having a bathroom nearby she can only work part-time and, for the most part, with relatives. Furthermore, it does not appear the condition is presently treatable, although surgery is still a possibility.

The basis of Gerald's argument against the extension of the alimony payment period is his income is substantially less in comparison with his income at the time the decree was entered. It is true Gerald's income has decreased since the original dissolution decree was entered. We

observe part of the reason for this is Gerald's voluntary actions. Gerald voluntarily sold his dairy herd. Furthermore, Gerald voluntarily made a "management decision" to continue operating his farm and take the risks associated with farming, rather than renting the farmland at $90 per acre. The trial court judge in the instant case noted Gerald "could take steps to make his farming operation more profitable, either by renting the farm, or expanding his livestock feeding operations."

This case involves the ability or inability to make choices which affect each party's respective ability to produce income. The record demonstrates Gerald made "management decisions" which resulted in lower income than if he made other reasonable choices. He voluntarily chose to forego income. Marian has not had the ability to make choices which would increase her income, rather her physical condition has placed limits on her income, and these will continue indefinitely. Marian should not be penalized for a situation which is involuntary and of long duration. To enforce the original decree would result in substantial injustice.

Under these circumstances, the trial court reduced the amount of Gerald's alimony obligation, but required the alimony to continue for a longer period. It cannot be said the trial court judgment constituted a failure to do equity. We affirm. Costs on appeal are taxed to Gerald.

AFFIRMED.