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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

ROBERT CONRAD DEYOUNG,)
Petitioner-Appellee,)
vs.)
BECKY DEYOUNG,)
Respondent-Appellant.)

Filed February 22, 1979

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2-62082

Appeal from Polk District Court - Don L. Tidrick, Judge.

Respondent-wife appeals from order modifying dissolution decree so as to terminate alimony obligation of petitioner-husband. Reversed.

Martin R. Dunn of Langley, Dunn, Mountain & Sellers of Des Moines for appellant.

John A. Templer of Thoma, Schoenthal, Davis, Hockenberg & Wine of Des Moines, for appellee.

Submitted to Snell, P.J., and Carter and Johnson, JJ. Oxberger, C.J., and Donielson, J., take no part.

PER CURIAM

In this appeal the respondent, Becky DeYoung, seeks reversal of the April 27, 1978 order of the trial court modifying the August 8, 1975 decree dissolving her marriage to petitioner, Robert DeYoung. The change effected by this order was an elimination of Robert's obligation to make monthly alimony payments to Becky of $200. Because the matter was heard below in equity, our review is de novo. Rule 4, R. App. P.

The standard for our review is whether Robert has established to our satisfaction that there has been such a material and substantial change of circumstances since the entry of the August 8, 1975 decree so as to render continuation of the alimony obligation inequitable. See in this regard, Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973); Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973). The trial court found Robert had met this burden.

Becky's challenge to the trial court's finding is based on two major contentions: (1) that any reduced earning capacity on Robert's part is the result of his voluntarily leaving his employment at a good salary; and (2) that the evidence fails to show that any reduced earning capacity on Robert's part is other than temporary.

As to the first contention the record reflects that at the time of the original decree, Robert was employed by Becky's father for an annual renuneration of $22,134. Approximately eighteen (18) months after the dissolution of his marriage to Becky, Robert left this employment. The trial court found, and we agree, that the record supports Robert's contention that his leaving was justified due to understandable friction with his ex-father-in-law as a result of the breakup of his marriage with Becky. We therefore do not conclude that the termination of this employment, even though initiated by Robert, is a circumstance which precludes elimination of Robert's alimony burden if this result is otherwise sustained by the evidence.

Robert remarried immediately following the decree dissolving his marriage to Becky and has provided towards his new wife's support and that of her two children from a former marriage. His new wife has been employed since May of 1976 with gross earnings of approximately $875 per month. During the remainder of the time that Robert worked for Becky's father, his earnings did not change substantially. After leaving this employment, Robert has worked at two different sales jobs. The first involved selling sporting goods and during the remainder of 1977, produced net earnings of $5,859. The adjusted gross income for Robert and his new wife for the year 1977 was $19,630. During

1978 Robert has worked as a salesman for a boat manufacturer with a $600 monthly draw against commissions earned. He estimated his annual earnings at this job for the Holland, Michigan territory would be $12,000-$14,000. But before the hearing his territory was changed to the newly opened Chicago area, where he claimed he had no basis for estimating what his commissions would be at that location. He hopes to be earning more money in 4-5 years, but testified that he has no way of predicting what this might be.

The evidence shows that at the time of the original decree, Becky was earning $8,124 annually as opposed to income of $11,280 annually at the time of the modification hearing.

Upon our de novo review of the evidence, we conclude that Robert has failed to show such a permanent change in his earning capacity as to warrant the modification ordered by the trial court. See Apfel v. Apfel, 238 Iowa 274, 279, 27 N.W.2d 31, 35 (1947). Nor do the totality of circumstances render such relief equitable. The record shows the amount of alimony contained in the original decree was stipulated by the parties. The stipulated child support which accompanied this award was, at $100 per month, a very modest sum. To focus solely on the alimony at this time and not consider Becky's total needs would be myopic. Taken as a whole, the total burdens placed upon Robert are not so inequitable as to warrant a change at this time.

Because this appeal arises from proceedings to modify the decree, no attorney fees are allowed either party. The order appealed from is reversed with directions to dismiss the petition for modification.

REVERSED.