IN THE COURT OF APPEALS OF IOWA

No. 8-349 / 97-1382
Filed November 30, 1998

IN RE THE MARRIAGE OF SUSAN ELIZABETH THOMAS AND BRIAN EMMET THOMAS

Upon the Petition of
SUSAN ELIZABETH THOMAS,

Appellee,

And Concerning
BRIAN EMMET THOMAS,

Appellant.

Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge.

Brian Emmet Thomas appeals the district court's denial of his petition to modify temporary child support and spousal support. **AFFIRMED.**

Lori Klockau and Chad A. Kepros of Bray & Klockau, P.L.C., Iowa City, for appellant.

Margaret T. Lainson of Meardon, Sueppel, Downer & Hayes, Iowa City, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

STREIT, J.

Brian Thomas appeals the trial court's refusal to modify his temporary support obligations due to a decrease in his annual salary. Because we find Brian's decreased income is self-inflicted, modification of his support obligations is not warranted. The trial court is affirmed.

I. Background Facts & Proceedings.

Brian and Susan were married in 1986. They have two children: Andrew, born March 30, 1987; and Julie, born January 8, 1990.

Brian is a doctor who completed his neurology residency program in June 1997 from the University of Iowa. During his final year of his neurology residency, Brian accepted employment as a neurologist in Charleston, Illinois. His starting salary was to be $136,000. To retain his employment, he would be required to pass the board certification exam within two years.

Susan has multiple sclerosis and is unable to work. Susan filed for divorce in March 1997. In an April 1997, the district court made temporary orders on child custody and support. The court awarded the parties joint legal custody of the children, and awarded Susan primary physical custody. The court ordered Brian to pay $1236 per month temporary child support, $500 per month temporary spousal support, and pay the couple's mortgage payment of $845 per month. Brian's

obligations were based on his 1996 net income of $68,937, a net monthly income of $3839.

II. Standard of Review.

Temporary orders entered pursuant to Iowa Code section 598.11 are final judgments and are appealable as a matter of right. *In re Marriage of Springer*, 538 N.W.2d 897, 900 (Iowa App. 1995). Our review is de novo. Iowa R. App. P. 4. We are not bound by the district court's finding of fact but we give it weight. Iowa R. App. P. 14(f)(7).

III. Modification of Child Support Obligation Based on Reduction in Income.

There must be a substantial change of circumstances to warrant modification of the child support provisions of a dissolution decree. Iowa Code § 598.21 (1997); *In re Marriage of Hester*, 565 N.W.2d 351, 353 (Iowa App. 1997). The change must be more or less permanent or continuous, it must not have been within the contemplation of the original trial court, and continued enforcement of the original decree in light of the changed conditions must result in positive wrong or injustice. *In re Marriage of Vetternack,* 334 N.W.2d 761, 762 (Iowa 1983). Furthermore, a change in financial conditions must be substantial. *Id.*

Brian argues his reduction in income supports a modification of his child support obligation. He argues the low scores he earned on his in-service exams

during his residency predict he would be unable to pass the board certification exam. Under his employment contract he was required to pass the board certification exam within two years. For this reason, he argues, he chose to accept a psychiatry residency at the University of Wisconsin, for $34,500 per year, rather than taking the $136,000 per year job.

Self-inflicted or voluntary reduction in earning capacity will not support a modification of a support order. *In re Marriage of Foley,* 501 N.W.2d 497, 500 (Iowa 1993). The rule seeks to prevent divorced parents and spouses from gaining an advantage by reducing their earning capacity and ability to pay support through improper intent or reckless conduct. *Id.* However, at times circumstances arise which are beyond the control of the parent and undermine the parent's ability to maintain a particular level of income. *See In re Marriage of Swan,* 526 N.W.2d 320, 324 (Iowa 1995) (father did not voluntarily resign from job and his decision to return to school was not made with improper intent); *Foley,* 501 N.W.2d at 500 (although spouse was responsible for loss of job, there was no intent to deprive children of support or evidence of reckless disregard for welfare of children). In such cases, a child support obligation may need to be adjusted.

Thus, the inquiry does not merely focus on the voluntariness of the conduct responsible for a reduced earning capacity, but whether the obligor has reduced their income with an improper intent to deprive their children of support or in reckless

disregard for their children's well-being. *See Walters v. Walters*, 575 N.W.2d 739, 741 (Iowa 1998). An inquiry into the voluntariness of the act which causes the reduction of income and the intent of the obligor has defied hard and fast rules in regard to when a commensurate reduction in child support obligation is warranted.[1] However, in situations where an obligor refuses to pursue a career, our supreme court has refused to modify the child support order. *See In re Marriage of Rietz*, 96-1189 (Iowa)(filed Oct. 21, 1998)(citing *Ellis v. Ellis*, 262 N.W.2d 265, 267-68 (Iowa 1978))(modification not allowed where obligor voluntarily retired at time when he still had substantial earning capacity)); *In re Marriage of Bales*, 439 N.W.2d 228, 230

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[1] *See Swan*, 526 N.W.2d at 324 (spouse sought vocational retraining after work-related injury caused loss of job); *Foley*, 501 N.W.2d at 500 (diligent efforts by obligor spouse to obtain new job following termination); *In re Marriage of Dawson*, 467 N.W.2d 271, 275-276 (Iowa 1991) (spouse changed careers with knowledge that lower child support payments would cause problems for children); *Vetternack*, 336 N.W.2d at 763 (incarcerated spouse nevertheless had assets available to satisfy support obligation); *Ellis v. Ellis*, 262 N.W.2d 265, 267-68 (Iowa 1978) (reasons offered by obligor spouse for reducing income by taking early retirement while still having a substantial earning capacity related to self-interest); *Flattery*, 537 N.W.2d at 803 (failure of spouse to actively look for employment although many job opportunities were present was voluntary); *In re Marriage of Blum*, 526 N.W.2d 164, 165-166 (Iowa App. 1994) (taking lesser paying job because of poor job market in community following plant closing was not voluntary reduction in salary); *In re Marriage of Drury*, 475 N.W.2d 668, 672 (Iowa App. 1991) (obligor spouse discharged from military for failure to control problem with his weight was not a voluntary reduction in earning capacity); *In re Marriage of Fidone*, 462 N.W.2d 710, 712 (Iowa App. 1990) (failure to relocate to community where employer moved business was motivated by desire to remain close to family and lack of job security at new location, and was not a voluntary reduction in ability to pay child support); *In re Marriage of Bales*, 439 N.W.2d 228, 230 (Iowa App. 1989) (spouse intentionally reduced her income by earning approximately one-third less income at new job).

(Iowa App. 1989)(modification not allowed where obligor quit job paying $15,000 per year to take job paying $5900 per year)).

Considering all of the relevant factors and evidence, we conclude Brian acted with reckless disregard to those who relied on his support by intentionally reducing his income. The evidence reasonably points to the conclusion Brian's reduced income was a result of factors arising from his divorce, not factors outside his control or personal considerations compatible with the interests of those who require his support.

Brian chose not to make $136,000 per year. He chose to accept a position which paid less than he made as a resident at the University of Iowa. His explanation for choosing a lower-paying job is not credible. At the least, it is within Brian's earning capacity to make the salary he did as a resident at the University of Iowa. Under these circumstances, it is not equitable to modify Brian's support obligation. The trial court determined Brian's child support obligation based on a net income of $68,937. This was reasonable under the circumstances. The support order of the trial court is affirmed.

AFFIRMED.