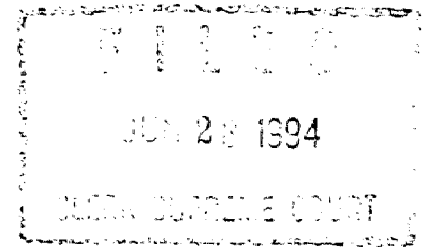


IN THE COURT OF APPEALS OF IOWA

No. 3-419 / 92-1445



IN RE THE MARRIAGE OF CHARLES J. CAHALAN
AND PEGGY J. CAHALAN

Upon the Petition of
CHARLES J. CAHALAN,

Appellee,

And Concerning
PEGGY J. CAHALAN,

Appellant.

Appeal from the Iowa District Court for Marshall
County, Carl D. Baker, Judge.

The respondent wife appeals a judgment of the district
court failing to modify the alimony provisions of the
parties' dissolution decree. **AFFIRMED.**

Susan L. Ekstrom, Des Moines, for appellant.

Charles F. Fairall of Fairall, Fairall, Kaplan, Hoglan,
Condon & Klaessy, Marshalltown, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink,

JJ.

HUITINK, J.

Charles and Peggy Cahalan were divorced on September 20, 1990. At the time of the decree Charles was the sole stockholder in a business which manufactures crowns and bridges for area dentists. In 1989 he had net monthly income of \$3,179. Peggy was not then employed. The court noted she suffered from severe mental depression which had required hospitalization in the past. Peggy was awarded alimony. The court noted that, due in part to her emotional and physical problems, she had been unable to develop a career. Charles was ordered to pay alimony of \$500 per month for a period of two years and then \$250 per month until Peggy remarried or the death of either party.

Peggy filed an application for modification on January 21, 1992. She asked for the alimony payments of \$500 per month to continue until her death or remarriage. She claimed she had difficulty finding employment and suffered constant health problems.

Charles still is the sole shareholder in his business. His income is consistent with that of previous years. He has remarried and now shares expenses with his new wife.

Peggy moved to Oregon, as she planned to do at the time of the dissolution. She obtained a job with the Eastern Oregon Alcohol Foundation and receives net income of \$124 per month. She also cleans an office, for which she is paid \$108 per month. Peggy was attending college full-time and hoped to get a degree in human services. The parties'

son, Daniel, moved to Oregon in October 1991 and shares some expenses with Peggy. Peggy and Daniel testified they planned to move to Faribault, Minnesota, where another of the parties' children, Robert, lives. Peggy stated she intended to transfer to Mankato State University.

The district court denied Peggy's application for modification. The court determined the dissolution decree considered Peggy's emotional and physical problems in fixing the amount of alimony and its duration and that she continued to suffer the same mental and physical problems which were identified at the time of the original trial. The court concluded Peggy had failed to show a substantial change in circumstances. The court also denied her request for attorney fees. Peggy appealed.

Pursuant to Iowa Code section 598.21(8) (1991), a court of competent jurisdiction may subsequently modify a decree of dissolution where there has been a substantial change in circumstances. In re Marriage of Feustel, 467 N.W.2d 261, 263 (Iowa 1991). To justify a modification, some material change must be shown in the circumstances of the parties, financially or otherwise, making it equitable that other or different terms be imposed. Id. A decree is not to be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed conditions. In re Marriage of Dawson, 467 N.W.2d 271, 274 (Iowa 1991). Moreover, the burden is on the party seeking modification to prove a substantial change in circumstances

by a preponderance of the evidence. Feustel, 467 N.W.2d at 263.

We find Peggy has not met her burden to show there has been a substantial change in circumstances. We agree with the district court's conclusion that the dissolution decree considered Peggy's emotional and physical problems. Peggy has not shown her condition is any different than it was at the time of the dissolution decree. We affirm the district court's denial of her request to modify the alimony provision of the dissolution decree.

Peggy claims the district court abused its discretion in denying her request for trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show the trial court abused its discretion. Id. We find no abuse of discretion in the district court's denial of attorney fees here.

She also seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We determine each party should pay his or her own attorney fees for this appeal.

We affirm the decision of the district court denying Peggy's application for modification. Costs of this appeal are assessed to Peggy Cahalan.

AFFIRMED.