FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOHN PECK WASHBURN AND TAMARA WASHBURN

Upon the Petition of)

JOHN PECK WASHBURN,)

Petitioner-Appellant,)

And Concerning)

TAMARA WASHBURN,)

Respondent-Appellee.)

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Filed August 27, 1986

6-243
85-1340

Appeal from the Iowa District Court for Linn County (No. 8628) - Ansel J. Chapman, Judge.

Petitioner appeals from the district court's order regarding his application for modification of the dissolution decree between the parties. **AFFIRMED.**

Dean A. Wenzel of Ibeling, Wenzel, Gravelie & Colton, Cedar Rapids, and Jon M. Kinnamon of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, for petitioner-appellant.

Stephen B. Jackson of Hines, Pence, Jackson, Day & Powers, Cedar Rapids, for respondent-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

PER CURIAM

John Washburn and Tamara Washburn had their marriage of almost seventeen years dissolved on June 10, 1981. In addition to child support obligations, the dissolution court ordered John to pay Tamara $250 per month in alimony until Tamara dies, remarries, or for a period of ten years, whichever event or period first comes to pass.

On March 2, 1984, John filed an application to modify the dissolution decree. In his application, John contended that alimony had been awarded on the basis that Tamara was employed only part-time at the time of the decree and that, as Tamara had now obtained full-time employment, the alimony should now be reduced or terminated. John alleged that Tamara's full-time employment was a substantial and material change in circumstances uncontemplated by the dissolution court which would allow the district court to so modify the original decree.

On April 23, 1984, Tamara filed a resistance to John's modification application followed, on October 18, by an additional resistance to John's modification application and her own application to modify the original decree. Tamara's application for modification was met by John's filing of an answer and resistance on October 25. On November 13, John amended his application for modification.

Hearing on the application to modify was held on March 20, 1985. On July 1, the trial court entered its final order on the application to modify. As part of its order, the court held that Tamara's obtaining full-time employment was a circumstance contemplated by the dissolution court at the time of the original decree and that, therefore, John had not shown a substantial and material change in circumstances, a prerequisite for modification.

John's posttrial motion for an expanded order and a new trial were overruled on August 16. On September 13, John filed a timely notice of appeal to the Supreme Court of Iowa.

Our review is de novo. Iowa R. App. P. 4. Although we give weight to findings of fact made by the district court, we are not bound by them. Iowa R. App. P. 14(f)(7).

Our authority to modify dissolution decrees is grounded in both statute and the cases. Iowa Code section 598.21(8) (1985) states that "[t]he court may subsequently modify orders this section [dealing with, inter alia, alimony payments] when there is a substantial change in circumstances." We are guided in our application of this authority by a number of principles which have emerged from our cases. The change must be material and substantial and must occur after the entry of the decree. In re Marriage of Jensen, 251 N.W.2d 252, 253-54 (Iowa 1977). It must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice. Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978). The change in circumstances must be permanent or continuous rather than temporary. In re Marriage of Mayer, 347 N.W.2d 681, 683 (Iowa Ct. App. 1984). The change in circumstances must not have been within the contemplation of the trial court when the original decree was entered. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974).

We agree with the district court that, contrary to the position urged by the appellant, Tamara's obtaining full-time employment and consequent increase in income is a circumstance that was contemplated by the court at the time of the original dissolution decree. We need go no further than the findings of fact made by the court along with its decree of dissolution to see that it considered this development. As a part of those findings, the court stated that

> [Tamara] is employed part-time at the Springhouse Restaurant in Cedar Rapids, Iowa as a hostess and waitress and works nine hours a week. She has no specific job training, but does have one year of college education. She has been looking for full-time employment, but has not been able to find it due to the economic conditions which are prevalent. She indicates that she will accept work if offered and hopes to get a full-time job which has benefits available to her.

(emphasis added). We think that the dissolution court's findings adequately show that at the time the dissolution decree was entered that court contemplated Tamara's eventual entrance into the work force as a full-time employee.

John makes much of the fact that in the original dissolution decree the court stated that its award of alimony was "based upon the contemplation by the Court that the Respondent is only gainfully employed on a part-time basis and is at this time in need of this support ordered herein from the Petitioner." We think, however, that John takes an overly-restrictive view of what fairly can be said to be within the contemplation of the district court at the time of its original decree. There exists no requirement that all matters within the contemplation of the dissolution court must be set forth in its decree; nor is there, conversely, a rule of construction holding that all matters not specifically mentioned in the decree are to be deemed as having not been considered by the court. The dissolution court's findings of fact show that it contemplated Tamara's securing of full-time employment.

Appellant claims support for his contentions in the case of McDonald v. McDonald, 183 N.W.2d 186 (Iowa 1971), where the Iowa Supreme Court held that a custodial mother's securing of employment for the first time was a material change of circumstances sufficient to justify a modification of the child support provisions of the dissolution decree. Id. at 189. In McDonald, however, the record showed that such employment and income was not contemplated by prior decrees, which were predicated upon the idea that the mother would not be

able to contribute any financial support for the family. Id. at 188. As we have found above, this is not the situation in the present case. Accordingly, appellant's argument in favor of modification of the dissolution decree fails.

Finally, we deal with Tamara's request that she be granted attorney fees for the defense of this appeal. Tamara has supported her application with an itemization of the time and services involved. Authority to grant attorney fees to the prevailing party in actions to modify dissolution decrees is given us by Iowa Code section 598.36 (1985). In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). Our application of this equitable principle to this case lead us to believe that Tamara is entitled to be compensated for attorney fees and costs associated with this appeal. John shall pay $1,000 of Tamara's attorney fees incurred on this appeal. Costs are assessed to John.

AFFIRMED.