

FILED
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MAR 29 1978

IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

IN RE THE MARRIAGE OF CATHERINE F. REED AND RALPH ROLAND REED

UPON THE PETITION OF)

CATHERINE F. REED,)

Appellee,)

Filed March 29, 1978

AND CONCERNING)

RALPH ROLAND REED,)

Appellant.)

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2-66836

Appeal from Polk District Court - A. B. Crouch, Judge.

Respondent appeals from a judgment denying his application for modification of the alimony provision of a dissolution decree. AFFIRMED.

Martin R. Dunn, of Des Moines, counsel for appellant.

Thomas Leahy, Jr., of Des Moines, counsel for appellee.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Respondent-Ralph Roland Reed appeals from a judgment denying his application for modification of a decree of dissolution of marriage entered August 6, 1975. In his application filed February 4, 1977, Ralph requested that the requirement that he pay \$600 per month in alimony be abolished since his previous earnings of \$30,000 per year had been reduced by his employer and since petitioner-Catherine F. Reed is now employed as a real estate agent.

On March 10, 1977, the district court entered its findings of fact and order denying respondent's application. In its findings of fact, the court noted that at the time the dissolution decree was entered, that court had made findings that respondent earned approximately \$30,000 per year and had about \$18,000 in personal debts, and that petitioner was not employed but was the beneficiary of two trusts which paid her a total average annual income of \$1867.

Since the dissolution decree was entered, Ralph's income increased in 1975 to \$34,201 and in 1976 to \$35,014. However, he alleged that he had been notified by his employer that his salary would be temporarily reduced by an estimated 23-24% because of fuel shortages and production cutbacks. Respondent has remarried and although his current wife works as a court reporter, he stated that he did not know how much she earns. Respondent's rent is \$535 per month and his wife assists him in paying that amount and other expenses. Although Ralph did not itemize his expenses, he indicated that his debt obligation has risen from \$18,000 to approximately \$30,000.

In her financial statement for 1976, petitioner accounted for earnings, trust income and alimony totalling \$15,278.26. Her monthly itemized expenses equalled approximately \$1078. She had about \$3000 in a savings account and \$1500 in a checking account at the time of the hearing on this matter. Catherine is currently working as a real estate agent in Michigan and earned \$1565 in 1976 from her activities. The trial court found that Catherine is dependent upon the child support and alimony payments being made by Ralph.

Our review in this matter is *de novo*. Rule 4, Rules of Appellate Procedure. Although we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P. Section 598.21, The Code, provides that a dissolution decree may be modified "when circumstances render them expedient." In *re* Marriage of Full,

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255 N.W.2d 153, 158-159 (Iowa 1977). The applicant has the burden of establishing that such circumstances exist. Id., Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). The subsequent change of circumstances which is necessary to justify a modification of the original decree is a substantial change, In re Marriage of Glass, 213 N.W.2d 668, 671 (Iowa 1973), and the circumstances which have changed must be those which were not within the contemplation of the trial court at the time it entered the decree. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974). The change in circumstances which will justify a modification must be permanent and continuous, and not temporary. Gesmacher v. Gesmacher, 247 Iowa 836, 840, 76 N.W.2d 790 (1956); Welch v. Welch, 256 Iowa 1020, 1025, 129 N.W.2d 642 (1964).

The trial court noted that Ralph had indicated that his reduction in salary was only temporary and that, within a short period of time, his regular salary would be restored. The court concluded that Ralph had not presented satisfactory evidence to the court concerning his present financial condition, his expenses, or the effect of his remarriage on those expenses. The court also concluded that Catherine's present employment was specifically contemplated by the court issuing the dissolution decree.

Nevertheless, Ralph argues on appeal that Catherine's receipt of various funds from members of her family constitutes gifts justifying a modification of the alimony provision. When the parties' Des Moines home was ordered sold and the proceeds divided equally pursuant to the decree, Catherine purchased a home in Michigan for approximately \$46,000. Catherine's parents assisted her in the purchase by making the down payment of approximately \$29,000, leaving Catherine with monthly payments of \$237 which includes principal, interest and taxes. Catherine paid the \$8131.73 proceeds she received from the sale of the home to her parents as partial reimbursement for the financial assistance they provided. In this regard, the trial court found:

"... The assistance received by Mrs. Reed from her parents in purchasing a home for herself and her children served only to insure a reasonable living place at moderate expense. This assistance does not contribute to Mrs. Reed's present income but merely allows the income received by Mrs. Reed to be better utilized in meeting the monthly expenses for herself and her children."

We agree with the trial court and reject Ralph's argument that the assistance constituted a gift. However, even if we were to accept his argument, we do not believe that this circumstance justifies a modification of the decree.

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Since the instant proceeding is ancillary to and not a part of the original marriage dissolution proceeding, we deem an allowance of attorneys fees on appeal to be inappropriate. See *In re Marriage of Havener*, 240 N.W.2d 670, 671 (Iowa 1976); *Dworak v. Dworak*, 195 N.W.2d 740, 743 (Iowa 1972). Therefore, we deny Catherine's request that such fees be assessed against Ralph. Costs of this appeal are to be paid by Ralph. The judgment of the district court is affirmed.

AFFIRMED.