FILED
MAY 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDITH ANNE DEWEBER AND DONALD DEAN DEWEBER

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Upon the Petition of)

JUDITH ANNE DEWEBER,)

Petitioner-Appellee,) Filed May 28, 1987

And Concerning)

DONALD DEAN DEWEBER,) 6-514 / 86-830

Respondent-Appellant.)

Appeal from the Iowa District Court for Dubuque County (No. DM 5020), Alan L Pearson and James L. Beeghly, Judges.

The respondent husband appeals from the trial court's denial of his application for modification of his alimony allowance. **AFFIRMED.**

William C. Fuerste of Fuerste, Carew, Coyle, Juergens & Sudmeier, Dubuque, for respondent-appellant.

Robert L. Day, Jr., Dubuque, for petitioner-appellee.

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

DONIELSON, J.

The respondent husband appeals from the trial court's denial of his application for modification of his alimony allowance. The respondent contends that the trial court erred in denying his application for an increase in alimony since the trial court found that he had proven a change of circumstances due to the petitioner wife's new job. The respondent also argues that the trial court erred in refusing to increase his alimony based on its belief that the property division in the original dissolution decree was inequitable. We affirm.

The marriage of petitioner Judith Anne Deweber and respondent Donald Dean Deweber was dissolved on February 8, 1985. The original decree provided that because Donald was to receive $52,907.00 in assets and Judith $2,100.00, no alimony was to be paid by either party toward the other. Most of the assets awarded Donald consisted of books relating to the game of checkers. The parties formed a business through which they sold these books. The books were found by the trial court to have a value of $42,000.00. On March 25, 1985, the trial court granted Donald's application for modification of the decree and awarded him $20.00 per month alimony, despite the fact that Judith was unemployed and lacked any immediate prospects for substantial employment.[1] On April 22, 1986, a different trial court dismissed Donald's application for modification of his alimony allowance, despite finding that he had proven a substantial change in circumstances due to Judith's acceptance of a $16,000.00 per year job as a minister. The trial court ruled that an increase in alimony would be inequitable because

> Judge Beeghly failed to equitably divide the assets of the marriage at the time of the original dissolution decree .... We decline to create further inequity between the parties by granting the Respondent's present request for increased spousal support.

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[1]We note that despite Patty's precarious financial situation throughout most of these proceedings, Patty did not file an appeal or any subsequent cross-appeal from any adverse rulings.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

On appeal, Donald asserts that a trial court may not deny him the relief to which he was otherwise entitled. Donald contends that in an alimony modification hearing, a trial court may only base its decision on matters constituting a substantial change in circumstances arising after the entry of the original dissolution decree and cannot readjudicate the equities of that prior decree. We hold that even assuming that the trial court erred in basing part of its decision on a perceived prior inequitable property dissolution, such error was harmless since the trial court's decision as a whole was correct. The rule pursuant to Iowa law is that we may affirm a decree in equity if it can be sustained upon any basis which is supported by the record, regardless of the basis used by the trial court. Midwest Management Corp. v. Stephens, 353 N.W.2d 76, 78 (Iowa 1984).

Neither party disputes the general principle that in order to obtain an increase in amount of alimony, the party requesting the increase must show a substantial change in circumstances since the date of the original decree and that such changes were not within the contemplation of the trial court when the original decree was entered. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1977). Such changes must also be permanent and continuous and not temporary. In re Marriage of Mayer, 347 N.W.2d 681, 683 (Iowa App. 1984). Judith concedes that Donald's modification request meets these requirements.

Our courts, however, have also recognized the principle that even if the requirements for modification are met, a modification will not necessarily be granted unless adherence to the prior provisions of the decree would work a

positive wrong or injustice on the party seeking modification. See Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978); In re Marriage of Glass, 213 N.W.2d 668, 671 (Iowa 1975). When a trial court considers the appropriateness of alimony, the trial court must consider the earning capacity of each party, the present standard of living and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983); see also Iowa Code § 598.21 (1985). Though in the present case we are called upon the consider a substantial change in circumstances since the last modification request, the above-cited factors are no less important when considering a further modification.

Upon our de novo review of the record, we agree with the trial court that a further increase in alimony would not be equitable under the circumstances. The record reveals that at the time the original trial court modified the decree ordering Judith to pay Donald $20.00 per month in alimony, Judith was unemployed and living with her parents. During this period of time, Donald was granted the use of the parties' modest but comfortable apartment and had the use of the parties' relatively-new car. Subsequent to the previous modification proceeding, Judith obtained a job as pastor of two rural United Methodist Churches at a salary of $16,000.00 gross per year, or $1,333.00 per month. With this job, however, came increased expenses for which Judith was responsible. Though Judith is furnished with a parsonage, she is responsible for the payment of all utilities, garbage collection, and other associated costs of operating a household. The record reveals that the parsonage is sparsely furnished with old or borrowed furniture. In addition, Judith was required to purchase a car in order to travel the distance between the two parishes she serves and to perform other ministerial duties. Judith had to borrow the money from her parents and still owes them $2,400.00. Judith's payments on the car are $291.83 per

month. Judith did not list this expense in her financial status report, but when added to her other monthly expenses, her total monthly expenses are approximately $1,280.00.

Considering Donald's listing of monthly expenses, we find Donald's testimony less credible than Judith's. We find no evidence that Donald's standard of living has declined. Donald testified that due to his cerebral palsy, he was unable to cook at home or order out. Donald testified, however, that he drove several times during the day to various restaurants. Donald testified that he spent $75.00 per month on shoe repair, $60.00 per month on clothes, and $85.00 per month for gasoline. Judith, however, testified that it generally cost $4.00 to get Donald's shoes resoled and that his shoe repair bill was around $20.00 per month. Donald testified that he spent $60.00 per month on clothes such as socks, underwear, and flannel shirts, yet Judith testified that Donald had several closets full of clothes which he does not wear. Donald admitted that the $85.00 per month gasoline expense was not correct. The record reveals that Donald makes numerous trips to visit friends, often driving five or six times a month to Dyersville, Iowa.

Donald also claimed expenses of $60.00 per month for medical and $30.00 per month in dental expenses, yet could not recall what any of his expenses were for the several months preceding the modification hearing. The record also reveals that even though Donald admitted that he still sells checker books for profits which are in turn returned to his checker book business for purposes of making the loan payment for the business, he failed to list any income from this source in his financial affidavit.

From the aforementioned facts, we conclude that Donald has failed to show such a significant change in circumstances requiring us to award an increase in alimony. While Judith has certainly obtained a higher income, her monthly

expenses have greatly increased. Donald has not shown that his standard of living has changed in any significant way since the previous modification hearing. We have previously held that "the spouse with the lesser earning capacity is entitled to be supported . . . in a manner as closely resembling the standards existing during the marriage as possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well" In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa App. 1983). Once the standards of living of the parties are comparable, however, "there is no reason, in equity, for the supporting spouse to provide still more." Id. We therefore hold that an increase in Donald's alimony is not justified at this time and that the trial court was correct in denying Donald's request for modification.

AFFIRMED.