IN THE COURT OF APPEALS OF IOWA

No. 4-136 / 93-0435

FILED
SEP 16 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF PATRICIA MAY EKLOFE AND ROBERT LEE EKLOFE

Upon the Petition of PATRICIA MAY EKLOFE,

Petitioner-Appellee,

And Concerning ROBERT LEE EKLOFE,

Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, Phillip R. Collett, Chief Judge.

Robert appeals from the district court decision denying his application to modify the dissolution decree. **AFFIRMED AS MODIFIED.**

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa, for appellant.

Patrick F. Curran, of Vinyard & Curran, Ottumwa, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HABHAB, J.

The marriage of Patricia and Robert Eklofe took place on November 21, 1964, it was dissolved in August 1985. At the time of the dissolution, Patricia was employed part-time at McDonald's. She was paid $3.65 per hour and her gross income for 1984 was $5,098.12.[1] Robert worked for Hormel in Ottumwa, Iowa. His gross income for 1985 was $24,487.34. The dissolution decree ordered Robert to pay Patricia $100 per week in alimony until she remarried or died.

Robert filed an application to modify the decree. The Hormel plant had closed in 1987. When Robert left Hormel, he was given the option of losing his job or being transferred out of state. Robert felt he was too settled in Ottumwa to move, so he opted for termination.

In December 1987, Robert obtained employment with Excel. Robert started at $5.00 per hour, and currently earns $9.00 per hour. He is guaranteed 36 hours per week, except for a nine-week period where he is guaranteed 32 hours. Robert's earnings have been growing steadily over the last three years. He is entitled to a pension and has medical insurance benefits.

In 1992, his gross income was $20,141.37. In 1992, Patricia's income from her job at McDonald's was $11,552.00

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1. Although Patricia's 1985 earnings would be a more appropriate measure since the dissolution took place in 1985, we were only provided with her 1984 earnings. We assume her earnings in 1985 were substantially similar to her earnings in 1984.

and she received $335.00 in interest from a certificate of deposit she inherited. She has no health or pension benefits.

Robert is currently cohabitating with a woman. The two share expenses except Robert pays all the utilities and she makes the house payment.

The district court found, among other things, that Robert was over $17,000 delinquent on his alimony. The court found Robert was unable to show any substantial change in circumstances and, because of Robert's poor payment record and Patricia's lack of health insurance, it would be inequitable to reduce his obligation even if a change had occurred. The court also noted that while Robert's income had decreased, his ability to make payments had not changed due to his cohabitation arrangement. The court dismissed the application. Robert appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Modification of the alimony provisions of a dissolution decree is justified only if there has been some material

and substantial change in the circumstances of the parties, financially or otherwise, making it equitable that other terms be imposed. Thayer v. Thayer, 286 N.W.2d 222, 223 (Iowa App. 1979). The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of the evidence. Mears v. Mears, 213 N.W.2d 511, 513 (Iowa 1973); Thayer, 286 N.W.2d at 223. Circumstances that have changed, to justify modification of alimony, must be those that were not within contemplation of the trial court when the original decree was entered. In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). Such changes must be more or less permanent or continuous, not temporary. In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983).

Robert had the burden to establish a substantial change in circumstances of the parties. We believe he has done so in this instance. Under these circumstances, Robert's decrease and Patricia's increase in earnings are substantial and justify a modification of the alimony payment. Accordingly, we modify the dissolution decree by reducing the alimony payments from $100 to $75. The alimony payments are to continue until either party dies or Patricia remarries.

AFFIRMED AS MODIFIED.