IN THE COURT OF APPEALS OF IOWA

No. 3-384 / 92-1911

FILED
JUN 28 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF JIMMY R. REILAND AND LINDA J. REILAND

Upon the Petition of
JIMMY R. REILAND,

Appellant,

And Concerning
LINDA J. REILAND,

Appellee.

Appeal from the Iowa District Court for Clinton County, James R. Havercamp, Judge.

Jimmy Reiland appeals from the district court's denial of his petition to modify the parties' dissolution decree. **AFFIRMED.**

A. John Frey, Jr. of Jurgemeyer, Frey & Haufe, Clinton, for appellant.

James D. Bruhn of Farwell & Bruhn, Clinton, for appellee.

Considered by Donielson, P.J., and Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J.

The marriage of petitioner, Jimmy R. Reiland, and the respondent, Linda S. Reiland, was dissolved by decree entered July 24, 1990. It was not a contested action, but was based on the agreement of the parties. The decree provided that Jimmy pay to Linda alimony in the amount of $1,000 per month beginning in August 1990 and continuing until such time as Linda attains the age of sixty or remarries. She will be sixty on January 20, 2005. The decree provided for other items of settlement between the parties. At the time of the decree, Jimmy was self-employed and part owner of the parties' business, Saladmaster. Linda had left the family business due to marital disputes prior to the decree. She was then employed at Kelly Temporary Services.

On April 27, 1992, Jimmy filed a petition to modify the dissolution decree stating that since the decree both parties had undergone changes in employment, earning capacity, income and resources. He claimed the changes were substantial and warranted modification of the alimony provision of the decree. After a hearing, the trial court denied Jimmy's petition to modify. This appeal ensued.

Iowa Code section 598.21(8) gives the lower court jurisdiction to modify a previous order for support in a dissolution decree where there is a substantial change of circumstances. The material change of circumstances must be financial or otherwise, making it equitable that other

or different terms be imposed. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1977). The change must have occurred after the date of the original decree and it must not have been in the contemplation of the court which issued the decree. Dvorak v. Dvorak, 195 N.W.2d 740, 742 (Iowa 1972). The change must be more or less permanent or continuous. In re Marriage of Carlson, 338 N.W.2d 136, 141 (Iowa 1983). The burden is on Jimmy to prove a substantial change in circumstances by a preponderance of the evidence.

Our standard of review in a dissolution proceeding is de novo. Iowa R. App. P. 4; In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992).

The record in the trial court shows the Saladmaster business was highly successful for a number of years mainly because of Jimmy's ability as a sales person and manager. Linda helped sufficiently in the formation and early years to warrant the agreed alimony. No attack is made on the original agreement as to alimony. Jimmy only requests a reduction now.

At the time of the decree, the business had started its way down. After the decree, Jimmy moved to Texas with a new wife, supposedly to be near his mother. They then returned to Iowa where Jimmy's current wife owns the Midway Lounge. Jimmy worked as a bartender there at times. His income has been reduced greatly, but the question is why?

A reduction in income which is self-inflicted does not constitute grounds for modification. In re Marriage of Van Doren, 474 N.W.2d 583, 586 (Iowa App. 1991); In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987).

The record is clear that Jimmy has not shown any loss of sales ability. He has voluntarily chosen not to pursue this ability. On the contrary, Linda has shown that she has made efforts and is not able to keep herself financially sound. Certainly she will not be able to do so without the alimony ordered.

Jimmy has the burden to show by a preponderance of the evidence that a material change of circumstances has taken place which was not in the contemplation of the court in the original decree. The trial court held he failed to carry his burden. Upon our de novo review, we agree.

The denial of Jimmy's petition to modify the alimony ordered is affirmed. Costs of this appeal, including $500 for Linda's attorney fees, are assessed against Jimmy.

AFFIRMED.