FILED
MAR 23 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN RE MARRIAGE OF
GALE L. BROOKHISER AND ROBERT C. BROOKHISER

Upon the Petition of)
GALE L BROOKHISER,)
Petitioner-Appellee/ Cross-Appellant,) Filed March 23, 1988
And Concerning)
ROBERT C. BROOKHISER,) 7-575 / 87-818
Respondent-Appellant/ Cross-Appellee.)

Appeal from the Iowa District Court for Lee County (CD457(N)1182), *David B Hendrickson, Judge.*

Respondent appeals the district court's denial of his application to modify the provisions of the parties' decree of dissolution respecting child support payments. **REVERSED AND REMANDED.**

Kent Hutcheson, Fort Madison, for respondent-appellant/cross-appellee.

Gregory A. Johnson of Johnson & Skewes, Fort Madison, for petitioner-appellee/cross-appellant.

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

PER CURIAM

Respondent, Robert Brookhiser, appeals the district court's denial of his application to modify the provisions of the parties' decree of dissolution respecting child support payments. He asserts a reduction in his child support payments is dictated by principles of equity. Petitioner, Gale Brookhiser, cross-appeals the district court's denial of her request for attorney's fees. She also requests appellate attorney's fees.

Our scope of review is de novo. Iowa R. App. P. 4. We must determine whether Robert has proven by a preponderance of the evidence the parties' circumstances have substantially changed since the decree was entered. Iowa Code § 598.21(8). These changed conditions must not have been within the knowledge or contemplation of the decretal court and they must be more or less permanent or continuous, not temporary. In re Marriage of Mayer, 347 N.W.2d 681, 683 (Iowa App. 1984).

We note at the outset the facts in this case are very unique. On March 10, 1983, when the decree of dissolution was entered, Robert was unemployed and had no source of income, as his unemployment insurance had expired. Nonetheless, he signed the decree even though it ordered him to pay $100 per week in child support. It is not disputed Gale knew Robert was without any income. Additionally, at no point during the dissolution proceedings was Robert represented by counsel.

The district court determined Robert had not shown a substantial change of circumstances to justify a reduction in the child support award. The court's determination was based on the fact Robert was employed at the time of the modification hearing and, therefore, had more income than when the decree was entered.

We are persuaded, however, the unusual situation presented by this case is not well-served by a mechanistic weighing of Robert's financial situation then and now. Such an approach ignores the actual expectations of the parties regarding child support at the time the decree was entered. It also ignores the decretal court's lack of knowledge of those expectations.

We find that neither Robert nor Gale expected Robert to pay any child support while he was unemployed. Gale contends she was not aware of where Robert could be located, thereby explaining her inability to collect child support from him. We note, however, Gale was in frequent contact with Robert's mother, who in turn would contact him. Gale's conversations with Robert's mother were apparently about visitation, not delinquent child support. Gale's contention is also belied by the circumstances giving rise to this modification proceeding. Shortly after Robert obtained regular employment (in 1986), Gale was able to garnish his wages, with the assistance of the child support recovery unit.

We are convinced, therefore, the parties did not contemplate Robert paying any child support while he was unemployed, despite the decree's provisions to the contrary. Although this finding does not in any way affect the substantial child support arrearage Robert owes, it does place the circumstances existing when the decretal court entered the decree in a different light. The decretal court could not have been aware of the parties' expectations in this regard. Robert was not present when the case was heard; the court merely had his signature agreeing to the decree as written.

It is our conclusion, therefore, Robert's employment and remarriage constituted a substantial change of circumstances sufficient to justify changing his future child support obligation to a level commensurate with his financial

situation See Iowa Code § 598 21(8)(k) We remand to the district court for the purpose of determining the appropriate amount

Costs of this appeal shall be taxed against Gale, and the parties shall be responsible for their own trial and appellate attorney's fees

REVERSED AND REMANDED