

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 26 1984

CLERK SUPREME COURT

IN RE THE MARRIAGE OF MIMI JACOBY AND CHARLES GABOR JACOBY

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UPON THE PETITION OF
MIMI JACOBY,

Petitioner-Appellant,

AND CONCERNING
CHARLES GABOR JACOBY,

Respondent-Appellee.

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Filed June 26, 1984

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Appeal from the Iowa District Court for Johnson County—Robert E. Ford, Judge.

Petitioner wife appeals from the denial of her application to modify the decree dissolving the parties' marriage. REVERSED AND MODIFIED.

James R. Keele, West Branch, for petitioner-appellant.

D. Keith Borchart, West Branch, for respondent-appellee.

Considered by Snell, P.J., and Schlegel, and Sackett, JJ.

Petitioner Mimi Jacoby appeals from the trial court's refusal to modify her 1981 dissolution decree by increasing respondent's child support obligation.

The parties had three children, who were born in 1974, 1975, and 1977, respectively. At the time of the dissolution the parties entered into a stipulation which was subsequently approved by the court. Mimi received custody of the three children but Charles had visitation during the entire summer vacation.

Mimi was awarded no alimony, but Charles was ordered to pay child support in the amount of \$300 per month per child during the school year through high school or age 18, whichever occurs last. The total child support award was \$500 per month during the months the children were in Charles's custody. The decree further provided that the parties were mutually responsible for four years of education past high school. The percentage of payments to be made by each parent was to be based upon their respective abilities to pay. Charles was required to provide hospital and medical insurance on the children.

Charles is now, and was at the time of the dissolution, employed by University Hospitals in Iowa City as a radiologist in diagnostic radiology. His salary in 1980 was \$53,418; today it is \$84,850.

Mimi is a college graduate with a degree in library science. She was not employed outside the home at the time of the dissolution. Following the dissolution, she worked for a short time but terminated her employment in order to stay home with the children. She does some babysitting and also breeds cats. This job provide a \$100 per month supplement to her income. The family qualified for food stamps, cheese and butter allocations and home winterizing.

Charles has voluntarily increased his support when the children have had additional needs. He buys at least a third of their clothing and he has paid some

of their medical and dental bills. Charles also contributes \$100 per month per ³⁷⁷ child to a savings account for the children's higher education. He assumes he will have to assume college costs. Neither party had remarried. Charles resists the modification because he feels that Mimi is a poor money manager and that his payments are adequate for the children's support. He contends that he should not be required to support Mimi.

Mimi's position is that she is entitled to additional support because of inflation, increased expenses in raising the children, and the increase in Charles's income since the dissolution.

The trial court, in denying Mimi's application, found that she, too, had some obligation to contribute to her own and the children's support. The court found that she was seeking additional support for herself under the guise of child support in order to defray her own living costs. The court found that these were her expenses, not Charles's. The court further found Mimi had failed to meet her burden and therefore denied the application for modification.

Our review is de novo. Iowa R. App. P. 4. Mimi has the burden of showing a substantial change in circumstances since the entry of the original decree. Iowa Code § 598.21(8)(1983). Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). The court in Dworak judicially noticed "the diminished purchasing power of the dollar," and weighed this factor when reviewing a child support modification. Id.

We find in this case that Charles's income has increased significantly, an increase of more than \$30,000 since the dissolution, and that his income is subject to a substantial income tax. We consider his tax burden in our determination of this matter.

The Iowa courts have held that the child's welfare is a necessary consideration in a modification proceeding to increase child support. See id. at 743.

Both parties have an obligation to support their children, not necessarily in

equal shares, but proportionately according to their ability to pay. ³⁷⁸In re Marriage of Novak, 220 N.W.2d 592, 598 (Iowa 1974).

While we agree with the trial court that Mimi has an obligation to contribute to the children's support, we find that the moderate inflation, coupled with Charles's increase in income, do support a modest increase in the child support award. We therefore modify the decree to provide that Charles shall pay as additional support all medical and dental bills not covered by insurance. In addition thereto, his child support obligation shall be increased by \$100 per month per child during the time the children are in Mimi's custody. We do not, by this decision, modify the \$500 per month payable while the children are in Charles's custody.

We reverse the decision of the trial court denying Mimi's application for modification with instructions to modify the dissolution decree in accordance with this opinion.

REVERSED AND MODIFIED.