FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF TOBY E. BRAVERMAN AND A. KENT BRAVERMAN

Upon the Petition of	)	
TOBY E. BRAVERMAN,	)	
Petitioner-Appellee,	)	Filed October 21, 1980
And Concerning	)	
A. KENT BRAVERMAN,	)	0-270 / 64315
Respondent-Appellant.	)	

Appeal from Johnson District Court - Thomas M. Horan, Judge.

Respondent-father appeals from trial court's order modifying the child support provisions of the parties' dissolution decree asserting that 1) no increase in support payments was justified because his income decreased since entry of the original decree; 2) the increase forces him to pay support from assets rather than income and, therefore, constitutes an impermissible retroactive adjustment of a property settlement; and 3) the evidence was insufficient to justify consideration of the effect of inflation. AFFIRMED.

Joseph C. Johnston, Iowa City, Iowa, for respondent-appellant.

Margaret T. Lainson of Meardon, Sueppel, Downer & Hayes, Iowa City, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Respondent-father, A. Kent Braverman, appeals from trial court's order modifying the child support provisions of the parties' 1971 dissolution decree. He asserts that: 1) no increase in support payments was justified because his income decreased since entry of the original decree; 2) the increase forces him to pay support from assets rather than income, and, therefore, constitutes an impermissible retroactive adjustment of a property settlement; and 3) the evidence was insufficient to justify consideration of the effect of inflation. We affirm trial court's order.

In the parties' dissolution decree filed December 22, 1971, petitioner was awarded custody of the two minor children, child support of $300 per month per child, and alimony of $550 per month. The parties' stipulation, incorporated by reference in the decree, provided that the child support payments could be subject to review upon petitioner's application five years from the date of the decree, and each five years thereafter. On August 1, 1979, petitioner applied for modification of the child support provisions alleging as material changes of circumstances that her financial position had not increased commensurate with respondent's since the decree of dissolution and that inflation had drastically increased the cost of raising the children. Respondent requested a temporary reduction in child support until his income again reached its 1971 level.[1] On October 11, 1979, trial court modified the decree by increasing respondent's child support payments to $900 per month for the two children. His appeal followed.

I. Scope of Review. Our review in this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine from credible evidence rights anew on those propositions properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to trial court's findings of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Child Support Provisions. Respondent contends his child support obligations should not have been increased when his earnings are less than they were at the time the decree was entered. He argues the increased support payments will deplete his assets and thus, in effect, be a retroactive adjustment of the original property settlement. Further, respondent alleges judicial notice of inflation is improper where petitioner has

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[1] Respondent also requested joint custody, but this was not pursued.

presented no evidence of the percent of increase in the cost of living. He alternatively argues that judicial notice could retrospectively apply only for the five-year period beginning with 1976.

Petitioner contends that trial court correctly increased the child support award since the standard for support is "ability to provide," rather than "taxable income." She also asserts that the provision in the decree allowing review of the child support provision every five years upon her application permits modification upon a lesser quantum of evidence than is ordinarily required to prove substantial and material changes of circumstances. Petitioner, in addition, contends the evidence of increased costs and the impact of inflation were sufficiently demonstrated to justify the increased child support award in any event.

Trial court found that inflation had caused substantial change, both in petitioner's expenses and respondent's net worth. The court concluded petitioner had shown the requisite material and substantial changes necessary to modify the child support provisions of the decree.

Generally, the power of the court to modify child support provisions exists only when the party seeking modification establishes a substantial change of circumstances from the time the decree was entered, making it equitable and just that different terms be fixed. Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978). A court should not modify a decree unless enforcement of its provisions would be attended by positive wrong or injustice as a result of changed conditions. Id.

We begin our analysis with the review provisions of the parties' stipulation, incorporated by reference into the decree:

> [t]he child support payments herein provided in Paragraph 5 hereof may be subject to review by the court upon application by petitioner five years from the date of the decree of dissolution and each five years thereafter. In addition, each party shall have those rights accorded under Iowa law.

We believe this provision permits review without a showing of substantially changed circumstances. We are guided by Wells v. Wells, 168 N.W.2d 54, 57 (Iowa 1969), and Tallarico v. Tallarico, 164 N.W.2d 805, 807 (Iowa 1969), wherein the decrees incorporated the parties' stipulation for further review without a showing of change of circumstances. Although the stipulation here as incorporated does not directly state no change of circumstances is required, we believe that the operation of the second sentence, which accords full rights under Iowa law, has the same effect. We find the standard of substantial change does not apply here where the parties clearly bargained

to reach an agreed upon review procedure which omits this standard and this agreement was incorporated by the court into its decree. The modification standard of substantial change does, however, apply to any other application for modification which falls outside the terms of the stipulation.

Therefore, we conclude that upon petitioner's application for review of the child support provisions, the court's sole function was to redetermine the child support provisions, using as criteria:

> . . . the parties' age, health, present earning capacity, future prospects, amount of resources owned by each or both parties, contributions of each to the joint accumulations, the children involved, duration of the marriage, indebtedness of each or both, and any other relevant factors which might assist the trial court in reaching a just and equitable decision. . . .

In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974).

Considering the Zoellner criteria in our review of the record, we find evidence was given on present earning capacity, future prospects, and amount of resources available to each party. We find the father's needs, to the extent respondent made his record, were considered by the court, along with the children's needs. Respondent testified that he expected 1979 to be the last year of loss for his radio broadcasting business. He also testified that a number of his income sources were not included on the financial statement. We do not find respondent to be unduly burdened by the increased child support award. We further defer to trial court's superior vantage point in assessing the credibility of witnesses.

We find no merit in respondent's contentions, for which he cites no authority, and for which he inadequately develops his record, that the increased child support award requires him to use assets which, in effect, results in a retroactive adjustment of the property settlement.

Further, the additional financial burden that continuing inflation has added to rearing children may be considered. Bice v. Bice, 251 N.W.2d 211 (Iowa 1977); see Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974). While inflation strikes at respondent as well, due to his available resources, its impact on him is not as great. Bice, 251 N.W.2d at 211.

We conclude trial court did not err in its findings and, while it could have made its determinations directly under the terms of the decree, its use of the substantial change standard was of no prejudicial effect to respondent. We therefore affirm trial court's order increasing the child support award to a total of $900 per month.

AFFIRMED.

DONIELSON, J. (dissenting)

I dissent from the majority's decision to affirm the trial court's order modifying the child support provisions of this decree. I know of no case, nor does the majority cite one, in which our supreme court expressly grants its approval to stipulations such as the one in issue here. A stipulation between the parties that permits review of the child support provisions of the decree without a showing of substantially changed circumstances circumvents the strong public policy consideration that decretal provisions should be final to the greatest possible extent. Presumably, this policy derives from a desire to prevent the same parties from coming back into court unless and until equitable considerations make review necessary. See Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1978); In re Marriage of Glass, 213 N.W.2d 668, 671 (Iowa 1973). Due to the importance of a public policy favoring finality in decree provisions, I would not approve measures that circumvent that policy without express authority from our highest court.

Furthermore, even if it may be said that such authority is provided by Wells v. Wells, 168 N.W.2d 54 (Iowa 1969), and Tallarico v. Tallarico, 164 N.W.2d 805 (Iowa 1969), I would not permit review of the child support provisions on the basis of this particular stipulation because it is devoid of any standard by which the trial court could determine if modification was justified. I view this stipulation as relatively meaningless without a more specific delineation of the respective legal rights and the specific standards by which they are to be determined. The vagueness of the stipulation is particularly objectionable because the result is in effect an open-ended decree for judicial review. Such a result is contrary to present statutory standards and to the established judicial policy that, to the greatest degree possible, a decree should represent the final determination of the parties' rights. Additionally, a provision for virtually unlimited judicial review invites an undesirable and unjustified increase in judicial workload. I therefore would reverse the order of the trial court.