IN THE COURT OF APPEALS OF IOWA

No. 7-101 / 96-874

000349

IN RE THE MARRIAGE OF MICHAEL ALLEN TRASK AND CAROL DIANE TRASK

FILED
MAY 29 1997
CLERK SUPREME COURT

Upon the Petition of
MICHAEL ALLEN TRASK,

Appellant,

And Concerning
CAROL DIANE TRASK,

Appellee.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

Appellant appeals a district court ruling denying his application for modification of the parties dissolution decree. **AFFIRMED.**

Brad J. Brady and Robert J. O'Shea of Crawford, Sullivan, Read, Roemerman & Brady, P.C., Cedar Rapids, for appellant.

Randall A. Nazette of Nazette, Marner, Good, Wendt & Knoll, Cedar Rapids, for appellee.

Considered by Habhab, C.J., Cady, and Vogel, JJ.

CADY, J.

Michael Trask appeals a district court order denying his application for modification of the child support and alimony provisions of a dissolution decree. On our review we affirm.

Carol and Michael Trask's 18-year marriage was dissolved on April 27, 1994. The dissolution decree incorporated a stipulation entered into by the parties.

Three children were born during the marriage: Michael A. Trask, Jr., born on June 29, 1980; Kelly R. Trask, born February 27, 1983; and Ian Daniel Trask, born July 11, 1987. The decree granted Carol primary physical care of the children. The decree, pursuant to the terms of the stipulation, ordered Michael to pay Carol $1386 per month in child support and $814 per month in alimony. The alimony obligation terminated after five years.

Carol was a full-time homemaker during most of the marriage. In 1991, she secured employment as a receptionist at Weland Labs. At the time of the decree, her net monthly income was $935. Michael's net monthly income was $3845.

Michael agreed in the stipulation to pay the majority of the marital debt. This debt included past tax liability in an unknown amount. Michael admitted he agreed to pay this entire debt without knowledge of the amount of debt. In 1995 the Internal Revenue Service garnished over $13,000 from his wages in payment of the tax liability. He still owes $9,000 in additional taxes.

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At the time of the modification hearing Carol's net monthly income from her employment was $1,035. Michael's net monthly income as reflected on his financial affidavit was $3,818, although Carol believed Michael earned less. The court denied Michael's application for modification of child support and alimony following a hearing. It found Michael failed to establish a substantial change of circumstances.

Michael appeals. He alleges his financial situation is desperate since the IRS began garnishing his wages. He also claims he was not represented by counsel at the time the negotiations regarding child support and alimony, and that he was unaware of the child support guidelines. He asserts Carol's wages and alimony exceed her living expenses by $292.39 per month. He maintains he is currently living in a mobile home while Carol continues to live in the marital residence. He asserts he has been unable to purchase any furniture since the dissolution. He also notes he has over $30,000 in unpaid debt which he is unable to pay under his current financial obligations. He maintains his child support obligation should be lowered under Iowa Code section 598.21(9), because based on Carol's financial information a ten percent variation exists between the amount of support under the original decree and the amount that would be paid under the current guidelines.

Michael next maintains his alimony payments should be deducted from his net income and added to Carol's income in determining the child support obligation. He lastly argues his alimony obligation should be reduced both in the amount and in its length.

I. Scope of Review: Our review of an action to modify child support is de novo. *In re Marriage of Bolick*, 539 N.W.2d 357, 359 (Iowa 1995). We give weight to the findings of the trial court, but are not bound by them. *Id.*

II. Child Support: Modification of the child support provisions of a dissolution decree is allowed only when there has been a material and substantial change in the circumstances since entry of the decree. *In re Marriage of Hess*, 522 N.W.2d 861, 863 (Iowa App. 1994). Circumstances which have changed so as to justify modification must be those which were not within the contemplation of the trial court at the time the decree was entered. *In re Marriage of Feustel*, 467 N.W.2d 261, 263 (Iowa 1991). Iowa Code section 598.21(8) sets out the factors we consider to determine whether a substantial change of circumstances has occurred. *See* Iowa Code § 598.21(8). Further, Iowa Code section 598.21(9) provides a substantial change of circumstances exists when the court-ordered child support award deviates by ten percent or more from the amount that would be due pursuant to the most current child support guidelines. Iowa Code § 598.21(9).

The trial court determined, and we agree, there has not been a substantial change of circumstances under Iowa Code section 598.21(8), (9). Although we observe Michael's current financial position is burdensome, the circumstances since the dissolution are unchanged. Moreover, there is no ten percent deviation under the guidelines to justify a modification. In determining whether a ten-percent deviation exists, we use the amount of child support established by the decree and compare it

to the amount under the most current guidelines. *In re Marriage of Bolick*, 539 N.W.2d 357, 360 (Iowa App. 1995). We do not recalulate the prior support obligation simply because Michael's income at the time of the decree placed him in the discretionary range under the guidelines in effect at the time. *Id.* Furthermore, in applying the current guidelines, we rely on Michael's financial affidavit in this case to determine his net monthly income. Under this approach, the deviation does not meet the ten-percent threshold.

Furthermore, only a prior obligation for spousal support may be deducted in determining "net monthly income" under the guidelines. *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991). Thus, Michael's current alimony obligation is not deductable under the guidelines to determine his "net monthly income." Nevertheless, we recognize the amount of the current alimony obligation may be considered in determining whether the guideline amount should be adjusted up or down to provide for the needs of the children and do justice between the parties. *Id.* Michael asks we make this adjustment in determining his current child support obligation. We decline.

The trial court had discretion at the time of the decree to adjust the child support from the guideline amount based on the amount of the current alimony obligation. *Id.* at 697. Thus, to permit this to be done in a modification action would, in effect, amount to the substitution of one judge's discretionary judgment for another's. *See Bolick*, 539 N.W.2d at 360. We will not perform new calculations in

deciding whether a ten-percent deviation exists in a modification proceeding by revisiting the wisdom of an earlier discretionary award. *See id.*

III. Alimony. Modification of alimony is justified only when there has been a material and substantial change in circumstances making it equitable to impose new terms. *In re Marriage of Van Doren*, 474 N.W.2d 583, 586 (Iowa App. 1991). In this case, the circumstances presented by Michael to support modification existed at the time the decree was entered. Although the amount of the IRS debt was not known, Michael knew there would be an obligation to be satisfied and agreed to accept the obligation.

AFFIRMED.