FILED
NOV 30 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF VIRGINIA S. SEXTON AND MATTHEW E. SEXTON

Upon the Petition of	)	257
VIRGINIA S. SEXTON,	)	
Petitioner-Appellee,	)	*Filed November 30, 1987*
And Concerning	)	
MATTHEW E. SEXTON,	)	7-357 87-107
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Bremer County (No. 22120), Ralph McCartney, Judge.

Respondent appeals from the district court ruling which denied his petition for modification of the parties' decree of dissolution. **REVERSED.**

Gaylen V. Hassman of Engelbrecht, Ackerman & Hassman, Waverly, for respondent-appellant.

Ralph E. Laird of Laird & Carney, Waverly, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Schlegel, Hayden, and Sackett, JJ.

DONIELSON, P.J.

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The respondent appeals from the trial court ruling which denied his petition for modification of the parties' decree of dissolution. He contends the trial court erred in not terminating petitioner's alimony upon her remarriage. We reverse.

Respondent Matthew E. Sexton and petitioner Virginia S. Sexton were married in 1978. Virginia had obtained a B.S. degree in elementary education prior to the marriage. After the marriage, she worked in a bank for one year and then obtained several teaching positions. In the fall of 1984, Virginia commenced studies to obtain a master's degree which she would complete in 1987. Matthew is a veterinarian.

The parties' marriage was dissolved in December 1984. Matthew was ordered to pay Virginia $250 per month in alimony until two years after Virginia received her master's degree. On May 25, 1986, Virginia remarried. Matthew petitioned for modification. The trial court found Virginia's rehabilitative efforts constituted extraordinary circumstances to continue the alimony after her remarriage and consequently denied the application for modification. Matthew appeals from the trial court's ruling.

Our scope of review is de novo. Iowa R. App. P. 4.

Matthew claims there was no evidence to support a finding that the purpose of the support alimony was to assist Virginia in completing her education for her advanced degree and in order to better herself and further her career as a teacher. He states that the alimony is not necessarily rehabilitative alimony. Matthew also argues that there was no evidence that the rehabilitative purpose of the alimony had not yet been achieved. Virginia feels that Matthew is raising these issues for the first time on appeal. Because we do not find these two issues dispositive of our decision in this case, we do not address them.

Matthew also asserts that the trial court erred (1) in concluding that the very purpose of the alimony can in and of itself constitute extraordinary circumstances to continue alimony, (2) in concluding as a matter of law that extraordinary circumstances exist in every situation where the purpose of the alimony award has not yet been achieved, and (3) in finding that petitioner introduced sufficient evidence to show extraordinary circumstances. Because we find these three claims relate to one issue, we address them simultaneously.

The Iowa Supreme Court has stated that while the subsequent remarriage of a spouse does not result in automatic termination of alimony, it does shift the burden to the recipient to show that extraordinary circumstances exist which require alimony continuation. In re Marriage of Shima, 360 N.W.2d 827, 828 (Iowa 1985); In re Marriage of Woodward, 229 N.W.2d 274, 280 (Iowa 1975). Circumstances which warrant a continuation of alimony are those which exist at the time that the petition for modification is filed and have nothing to do with circumstances, issues, or other factors relating to the original decree. Shima, 360 N.W.2d at 829. Examples of extraordinary circumstances include (1) annulment of a second marriage; (2) invalidity of a second marriage; (3) inability of the subsequent spouse to furnish support; (4) death of the subsequent spouse; and (5) dissolution of the subsequent marriage. Id. The dispositive issue in a modification of alimony suit shall be whether the recipient spouse needs continued alimony. In re Marriage of Schober, 379 N.W.2d 46, 47 (Iowa App. 1985).

Matthew submits that Virginia made no showing at all that extraordinary circumstances exist to warrant continuation of alimony. Indeed, a review of both the hearing transcript in this case and the trial court's ruling indicate Virginia's evidence consisted of nothing other than Matthew's improved financial situation. Matthew argues the exhibits demonstrating his financial condition

were improperly admitted because they were irrelevant and hearsay. While we are in agreement that Matthew's financial situation is not the crux of this case, admission of the exhibits was within the court's discretion; and we find the court did not abuse its discretion in admitting the exhibits.

Virginia submitted no evidence with regard to her continued need for the alimony and her financial circumstances or her new husband's ability or inability to support her and his financial circumstances. Matthew offered evidence on rebuttal to the effect that Virginia's new husband earns $26,000 as assistant dean of Student Organizations and Activity Center at Iowa State University.

The trial court concluded that the very purpose of the alimony can in and of itself constitute extraordinary circumstances to continue alimony, rather than determining whether Virginia's remarriage had an adverse or favorable impact on the alimony purpose. The trial court relied heavily on the case of In re Marriage of Orgren, 375 N.W.2d 710 (Iowa App. 1985), which held "the continuation of alimony beyond marriage is especially appropriate where its purpose is rehabilitative—to assist the payee in obtaining further education necessary to permit her to undertake a self-supporting career." Id. at 712. The trial court found that the rehabilitative purpose of the support alimony had not been fulfilled.

We find the trial court's reliance on the Orgren case misplaced for several reasons: (1) the Orgren marriage lasted twenty-six years, as opposed to six years in the case at hand; (2) the recipient spouse in Orgren was unskilled, had been a homemaker during the entire marriage, upon dissolution started pursuing a degree while she was in her mid-forties, and was partially disabled, whereas Virginia Sexton already had substantial earning ability, employable skills, job experience, and had previously acquired a B.S. degree; and (3) Orgren stated

the recipient's need is also based on recognition of contributions made by one spouse to the other's advancement, id. at 713, wherein the recipient wife in that case contributed to her husband's completion of twelve years of higher education, whereas Matthew had achieved all but one year of his veterinarian schooling prior to marriage in the case at hand. Alimony was awarded for five years or upon the recipient spouse's receiving her degree, whichever came first in Orgren, whereas we note the trial court awarded alimony to cease two years after Virginia received her master's degree in the case at bar. Furthermore, we find the Orgren case stands for the principle that under the right factual circumstances where the need continues and the second spouse cannot meet that need, extraordinary circumstances will exist where the original goal was rehabilitative or pursuit of further education. We do not believe the Orgren court held that alimony continued automatically simply by virtue of what the alimony purpose was. We find the burden of proof is still on Virginia to show factual circumstances justifying the continuation of alimony, not on Matthew to show that she no longer has a need.

We also think the trial court was in error in looking at the time of the original decree, rather than at the time of the modification proceedings, in determining whether extraordinary circumstances exist, in contravention to our law as outlined in Shima, 360 N.W.2d at 829. The trial court did not examine the present financial ability of Virginia or Virginia's subsequent husband. The court in Shima, 360 N.W.2d at 829, held that the spouse receiving alimony failed to meet her burden of proof because she did not show her present husband was unable to support her. We note that the court in Orgren, on which the trial court relied, looked extensively at the recipient spouse's financial circumstances, as well as the subsequent spouse's income.

We cannot find that, as a matter of law, extraordinary circumstances exist in every situation where the purpose of the alimony award has not yet been achieved. This perception dramatically changes the law in Iowa as it now stands. To so hold as the trial court did could result in alimony continuing even although the recipient or the recipient's new spouse possesses substantial wealth.

We are not persuaded by Virginia's arguments in her brief. Virtually all of Virginia's argument relates to the time the original decree was entered, the intent of the original decree, and the financial condition of the parties at the time of the original decree, as opposed to the date the modification application was filed. Virginia argues that the alimony award was to be construed as part of the property settlement since Matthew's veterinary degree and business could not be divided. The trial court held the alimony was to be considered "support" alimony, rather than "property" alimony. Matthew concedes this point. We agree. In addition, Virginia argues that Matthew's increased earnings as a veterinarian justify continuation of alimony to Virginia. Our law in Iowa allowing continuation of alimony after remarriage is not based upon the increased earning ability of the payor spouse as constituting extraordinary circumstances.

Matthew made out a prima facie case for termination of alimony payments by showing Virginia's remarriage. See Woodward, 229 N.W.2d at 280. We do not think Matthew's increased ability to pay alimony constitutes sufficient evidence to satisfy Virginia's burden of proof to show extraordinary circumstances. Neither are we in accord with the trial court's findings that the purpose of alimony, i.e., rehabilitation, in and of itself constitutes extraordinary circumstances or that extraordinary circumstances exist where the purpose has not yet been achieved.

We therefore reverse the trial court and order termination of alimony retroactive to the date of Virginia's remarriage. See In re Marriage of Harvey,

393 N.W.2d 312 (Iowa 1986) (alimony is terminated effective as of the date the ex-wife relinquished her right to the payment of alimony). To hold otherwise would penalize Matthew by requiring him to pay sums during periods of delay attendant in court proceedings.

REVERSED.

All judges concur, except Sackett, J., who specially concurs.

SACKETT, J. (specially concurring)

This case involves the dissolution of a six-year marriage during which Virginia made sacrifices in her own career advancement to assist with her husband's career advancement. In the decree she was awarded two years of minimal alimony to assist her in obtaining additional education so she can reenter the job market. She has remarried. This court has determined her alimony should cease.

I agree that the majority has correctly applied the dictates of the Iowa Supreme Court and in terminating her alimony has given no consideration to the fact the alimony was a payment made to her because she had made marital sacrifices and left the marriage at an economic disadvantage. See In re Marriage of Shima, 360 N.W.2d 827 (Iowa 1985). The court can only consider circumstances which exist at the time of the petition for modification, not at the time of the original decree. *Shima, 360 N.W.2d* at 829.

Although it is in accord with the dictates of the Iowa court, I have problems finding the equity in such a holding.

Why should remarriage terminate Virginia's right to payments made in exchange for marital sacrifices. The fact alimony was to terminate on remarriage is based on an outdated sexual stereotype that a woman's place was in the home and unless she received alimony until she found a new spouse she would be a burden to society. This traditional concept needs to be reexamined in today's society where men and women are both employed outside the home and we no longer look at alimony as just support but may use it to balance the economic inequities of the marriage.

I concur with the majority.