FILED
OCT 05 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-140 / 92-1084

IN RE THE MARRIAGE OF ROBERT G. FROHN AND PHILLIS A. FROHN

Upon the Petition of

000149

ROBERT G. FROHN,

Appellant,

And Concerning

PHILLIS A. FROHN,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge, sitting by special appointment.

The husband appeals a district court decision denying his application to modify his alimony obligation under the parties' dissolution decree. **AFFIRMED.**

R. James Sheerer and Kevin D. Engels of Correll & Sheerer, Cedar Falls, for appellant.

L. Dan Snow of Reed Mernen & Mershon, Snow & Knock, Cedar Falls, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

000150

HABHAB, J.

Robert and Phillis Frohn were married on October 25, 1965. A dissolution decree was entered for the parties on December 16, 1985. At the time of the dissolution Robert was employed at John Deere. His base salary was $26,520 and with overtime he earned about $31,200. Phillis was unable to work due to arthritis and retinitis pigmentosa, which affects her vision. There was an approximately equal distribution of the marital property. Robert was ordered to pay alimony of $160 per week, which is $693 per month, until Phillis died or remarried.

Robert remarried in August 1987. His present wife, Marion, is employed at Viking Pump where her annual income is about $25,338. Robert decided to take early retirement in August 1991, when he was sixty years old. He receives $15,408 in retirement benefits, or $1,284 per month.

On September 8, 1991, Robert filed an application to modify the alimony provision of the dissolution decree. He asked for a reduction in his alimony obligation due to his reduction in income.

A hearing was held on February 11, 1992. Robert testified that he retired due to medical problems. He had cramps in his legs which would awaken him once or twice a week. He also occasionally had a pinched nerve in his right shoulder which would render that hand numb. Robert unsuccessfully sought medical treatment for his problems.

000151

He did not receive a medical opinion advising him to leave his job.

Phillis testified that she moved to San Diego, California, in July 1991, in order to be closer to her daughter. She was temporarily living with her daughter, but planned to move into an apartment after the modification proceedings were concluded. Phillis had income of $5,148, or $429 per month, from social security benefits. She was fifty-six years old at the time of the hearing. Her health had not improved since the dissolution decree and has somewhat deteriorated.

The district court found that Robert had failed to show a substantial change in circumstances not contemplated at the time of the dissolution decree. The court found Robert's medical complaints were those normally associated with the aging process. The court concluded his retirement was a voluntary reduction of income. The court therefore denied Robert's application for modification. Robert was ordered to pay $500 for Phillis's trial attorney fees. Robert appealed.

Our scope of review in this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

000152

Pursuant to Iowa Code section 598.21(8), a court of competent jurisdiction may subsequently modify a decree of dissolution where there has been a substantial change in circumstances. In re Marriage of Feustel, 467 N.W.2d 261, 263 (Iowa 1991). To justify a modification, some material change must be shown in the circumstances of the parties, financially or otherwise, making it equitable that other or different terms be imposed. Id. The circumstances which have changed must be those which were not then within the contemplation of the court when the decree was entered. Id.

Robert's eventual retirement was within the contemplation of the district court when the decree was entered. Thus, this fact alone cannot be considered a substantial change in circumstances.

Robert contends that his medical problems, which caused him to take early retirement, justify a reduction in his alimony payments. However, medical problems associated with the aging process are in the contemplation and knowledge of the trial court when a decree is entered. In re Marriage of Skiles, 419 N.W.2d 586, 589 (Iowa App. 1987). They are reasonable and ordinary changes that are likely to occur. Id. We agree with the district court that Robert's medical problems are of a type associated with the aging process and were within the contemplation of the court when the dissolution decree was entered.

000153

We determine Robert's reduction in income was voluntary. We note his early retirement was not based upon any medical advice. Furthermore, Robert did not make any inquiries about transferring to a different job position at John Deere which may have caused him less physical stress. Robert has failed to show a substantial change in circumstances sufficient to justify a modification of the dissolution decree.

Phillis has asked for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We order Robert to contribute $500 towards Phillis's appellate attorney fees.

We affirm the district court. Costs of this appeal are assessed to Robert.

AFFIRMED.