

IN THE COURT OF APPEALS OF IOWA

No. 1-529 / 10-1908
Filed August 10, 2011

**IN RE THE MARRIAGE OF MARY BOLSER
AND KARL BOLSER**

Upon the Petition of

MARY BOLSER,
Petitioner-Appellee,

And Concerning
KARL BOLSER,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Karl Bolser appeals from the district court's refusal to modify his child
support and alimony. **AFFIRMED.**

Pamela A. Vandell, Des Moines, for appellant.

Mary Bolser, Des Moines, pro se.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

Karl Bolser appeals from the district court's refusal to modify his child support and alimony. We affirm.

BACKGROUND. Karl married Mary Bolser in July of 1988. They have two children, one born in April of 1995, and the second in June of 2000. Their marriage was dissolved in July of 2007. The dissolution court entered what was termed a stipulated decree of dissolution of marriage wherein it accepted and approved the parties' stipulations on all issues. As a result the parties were granted joint legal and joint physical custody of the children and they were held jointly responsible for, among other things, the children's needs. Each party was to pay one-half of day care and education expenses as well as clothing costs. Karl was to pay differential child support that was to decrease in increments until May 1, 2014, when it would be \$791.58 each month to be paid until the younger child graduated from high school or reached nineteen years of age, whichever occurred sooner. Child support was also to cease for a child who died, married, or became self-supporting. The decree noted that the child support was determined by showing Karl having a net monthly income of \$7,786.05, and Mary having a net monthly income of \$2500 a month. Provisions were also made for secondary education expenses. Karl was also ordered to pay Mary alimony beginning in August of 2007 through July 2018.

In April of 2010 Karl filed an application to modify the decree claiming that since the decree was filed there has been a material and substantial change of circumstances in that his income has decreased warranting a modification of his

alimony and child support obligation. He asked that the child support and alimony obligations be reduced and that the parties' obligations for uninsured medical expenses and costs related to the children be reevaluated.

The matter came on for hearing in October 2010 and in that month the district court filed a ruling finding Karl had failed to meet the burden necessary to modify child support and alimony. His application for modification was denied and this appeal followed.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.4; *In re Marriage of Festal*, 467 N.W.2d 261, 263 (Iowa 1991). We examine the entire record and adjudicate anew the parties' rights on issues properly presented. *In re Marriage of Gail*, 509 N.W.2d 738, 740 (Iowa 1993).

OTHER ISSUES. Mary is representing herself. We do not utilize a deferential standard when a person chooses to represent herself. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa Ct. App. 1995); *Metropolitan Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991).

The law does not judge by two standards, one for lawyers and another for lay persons. *Id.* Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.

Kubik, 540 N.W.2d at 63.

Mary has failed to file a brief. Where a party fails to file an appellate brief we have a number of options available to us due to this failure. *Bosch v. Garcia*, 286 N.W.2d 26, 27 (Iowa 1979). When the appellee fails to file a brief,

the appellant is not entitled to a reversal as a matter of right, but the court may, within its discretion, handle the matter in a manner most consonant with justice and its own convenience. [We] will not

search the record to find a theory upon which to affirm the judgment and may confine [ourselves] to the objections raised by the appellant or treat the failure to file a brief as a concession of the truth of the facts as stated by appellant, or even as a confession of error, if the appellant's brief appears reasonably to sustain such action.

Bowen v. Kaplan, 237 N.W.2d 799, 801 (Iowa 1976).

In this case, we elect both to limit our consideration to the issues and arguments in the appellant's brief, see *Jefferson Cnty. v. Barton-Douglas Contractors, Inc.*, 282 N.W.2d 155, 157 (Iowa 1979), and not go beyond the ruling of the trial court in searching for a theory upon which to affirm its decision. See *Pringle Tax Serv., Inc. v. Knoblauch*, 282 N.W.2d 151, 153 (Iowa 1979). With these principles in mind we consider the arguments Karl has advanced.

MODIFICATION OF ALIMONY. Karl contends the district court should have reduced his alimony obligation for he has shown the substantial change in circumstances necessary to support the modification. He contends he has shown a permanent reduction in his income, he has remarried, and he has a third child to support in a declining economy. He contends his decrease in earnings is not voluntary, but is the result of more competition in the Des Moines area for the type of veterinary services he provides.

ALIMONY. The dissolution decree provided Karl would pay Mary rehabilitative alimony for eleven years according to the following schedule.

August 1, 2007 to July 31, 2009: \$2500 a month
August 1, 2009 to July 31, 2011: \$2250 a month
August 1, 2011 to July 31, 2013: \$2000 a month
August 1, 2013 to July 31, 2015: \$1750 a month
August 1, 2015 to July 31, 2017: \$1500 a month
August 1, 2017 to July 31, 2018: \$1000 a month

Karl contends his income has decreased 19.6% since the decree was entered in 2007. He argues that Mary has made little effort to rehabilitate herself since the dissolution. He also argues she has an accounting degree, has passed the CPA examination and has the ability to earn at least \$30,000 a year.

Modification of a dissolution decree is governed by Iowa Code section 598.21(C) (2009). “Modification of the alimony provisions of a dissolution decree is justified only if there has been some material and substantial change in circumstances of the parties, financially or otherwise, making it equitable that other terms be imposed.” *In re Marriage of Van Doren*, 474 N.W.2d 583, 586 (Iowa Ct. App. 1991). The party seeking the modification must prove the change in circumstances by a preponderance of the evidence. *In re Marriage of Rietz*, 585 N.W.2d 226, 229 (Iowa 1998); *Van Doren*, 474 N.W.2d at 586. “Circumstances that have changed, to justify modification of alimony, must be those that were not within contemplation of the trial court when the original decree was entered.” *Van Doren*, 474 N.W.2d at 586 (citing *In re Marriage of Full*, 255 N.W.2d 153, 159 (Iowa 1977)). Such changes also must be more or less permanent or continuous, not temporary. *Id.*

In determining whether there has been a substantial change in circumstances the court is to consider “changes in the employment, earning capacity, income, or resources of a party.” Iowa Code § 598.21C(1)(a). The court is also to consider the remarriage of a party, *id.* § 598.21C(1)(g), and possible support of a party by another person, *id.* § 598.21C(1)(h). *See also In re Marriage of Page*, 219 N.W.2d 556, 558 (Iowa 1974) (holding, in modification

action, that while divorced husband's present wife had no obligation to support his former wife, it was proper to consider his overall financial condition, including the fact his present wife was employed and earned income, in fixing his alimony obligation).

Karl's earnings come from two sources. He has a veterinary practice with the Des Moines Animal Emergency Clinic P.C., and he holds a part-time teaching position at Iowa State University in Ames, Iowa. Karl contends he had an income of \$144,218 in 2010, with \$43,000 from Iowa State and \$101,218 from his practice. He contends his annual earnings at the time of the dissolution were \$179,400 and the reduction in his income is permanent not temporary. The dissolution decree showed his net monthly income to be \$7,786.05. The district court found and we agree that it is not possible to reconcile Karl's income as shown in the decree with a pretrial financial statement and support work sheet.

Information on Karl's earnings at the time of trial were based on a payroll account dated September 30, 2010, from Iowa State which show total gross pay of \$4,703.45 for what appears to be a month period.¹ A September 25, 2010 pay stub from his veterinary practice, Animal Emergency & Referral, shows a gross income for year-to-date of \$70,199.18. The district court projected Karl's income from the clinic for 2010 to be \$101,218. The district court concluded Karl's income from his practice had decreased by \$1000 a month since July of 2007

¹ This was the total of the Iowa State plan credit and his salary. Taxes, medical insurance and a retirement plan decreased this amount, but no related business expenses were taken.

and his income from Iowa State had increased by a like figure during the same time frame.

The court then looked at Mary's income and found it had decreased from the \$30,000 a year figure shown in the dissolution decree. The district court noted Mary testified without contradiction that she had never earned \$30,000 a year since the dissolution. The court also found she was laid off in August 2010 and had not found new employment. The court then denied Karl's request for a decrease in his alimony payments. There has been no substantial decrease in Karl's income since the dissolution and Mary has been unable to meet the income figure projected for her in the dissolution decree.

Karl contends that the \$30,000 annual income imputed to Mary in 2007 was based on the belief she could earn that amount though he acknowledged at the time of the modification hearing she had not found full-time employment in accounting or any field. He argues that despite receiving rehabilitative alimony she has taken no steps to improve her employment skills. He contends it is unfair to continue the ordered rehabilitative alimony payments to her and that her alimony should be reduced. Karl has failed to make the required showing to decrease his alimony obligation and we affirm the district court on this issue.

CHILD SUPPORT. Karl contends his child support should be decreased for his income has decreased and the decrease is not a voluntarily reduction in income. Under section 598.21C(2)(a), "a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support

guidelines.” This rule applies even where the original child support was established by stipulation. *In re Marriage of Wilson*, 572 N.W.2d 155, 157 (Iowa 1997); see also *In re Marriage of Holland*, 260 Iowa 248, 250, 149 N.W.2d 124, 125 (1967) (“The fact the parties made an agreement for support of children and the court approved it in the original decree does not affect the power to modify the decree.”).

Like the district court we are unable to find that Karl has shown the required substantial change in circumstances to modify the decree. We do look at his argument that an annual income of \$30,000 should be imputed to Mary. However, even if we were to do so it should not change the support because \$30,000 of annual income was imputed to Mary in the original decree.

AFFIRMED.