

**IN THE COURT OF APPEALS OF IOWA**

No. 7-107 / 06-1185  
Filed February 28, 2007

**IN RE THE MARRIGE OF DEBORAH K. HOST  
AND JAMES D. WESENBERG**

**Upon the Petition of  
DEBORAH K. HOST,**  
Petitioner-Appellee,

**And Concerning**

**JAMES D. WESENBERG,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

The respondent appeals from the district court's order denying his petition to modify the dissolution decree. **AFFIRMED.**

Thomas P. Schlapkohl of Brick, Gentry, Bowers, Swartz, Stolze & Levis,  
P.C., West Des Moines, for appellant.

Karen A. Taylor of Taylor Law Offices, Des Moines, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VOGEL, P.J.**

James Wesenberg appeals from the district court's denial of his petition to modify the spousal support payable to his former wife, Deborah, under the provisions of their dissolution decree. Upon our de novo review, *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005), we concur with the district court that a substantial change in circumstances has not occurred since entry of the decree.

The parties' marriage was dissolved by decree filed in October 2004, which granted child support for three minor children and spousal support to Deborah, uniquely tied to post-decree mortgage payments on the marital home, as follows:

The parties shall continue to retain ownership of said real estate as tenants in common. [James] shall be responsible for paying the entire house payment (currently \$1237.00 per month) directly to the lender with a maximum responsibility on [James's] part of \$1300.00 per month given the fact that the mortgage is a variable rate mortgage. Upon payment of the house payment each month, the payment shall be allocated between the following amounts of child support and alimony payments deemed paid by [James] each month:

	<u>Child Support</u>	<u>Alimony</u>
Three children	\$828.00	\$409.00
Two children	\$693.00	\$544.00
One child	\$472.00	\$765.00

It is further ordered, adjudged and decreed that [James's] alimony obligation shall continue for ten (10) years from the date of the decree, upon the sale of the home, Deborah's remarriage, or the death of either party, whichever shall first occur.

It is further ordered, adjudged and decreed that the home shall be sold upon the youngest child's eighteenth birthday or Deborah's remarriage, whichever shall first occur. Upon sale, the net proceeds shall be divided equally between the parties. [Deborah] shall have the option of buying [James] out of his equity interest in the family home.

Deborah began receiving public assistance in early November 2004, requiring assignment of her interest in child support to the State of Iowa. In early December 2004, the Child Support Recovery Unit (CSRU) of the Iowa Department of Human Services filed a motion to partially set aside and correct the decree provisions dealing with child support and spousal support as relating to the mortgage payments, to direct these payments be made through the Collection Services Center. The district court granted the motion, directing that Deborah be “responsible for paying the entire house payment (currently \$1237.00 per month) directly to the lender so long as she lives in the property.” The court further ordered “that the real estate may be sold at any time by [Deborah] but in no event the home shall be sold no later than upon the youngest child’s eighteenth birthday or Deborah’s remarriage, which shall first occur.” The original three-tiered payment scale for child support and spousal support remained as in the decree, with spousal support to end upon the same conditions. The court ordered the payments be made through “child support recovery” and directed an income withholding order be entered for the payments.

James filed a petition to modify the spousal support provision in August 2005, claiming a material and substantial change of circumstances “justifying an elimination of respondent’s alimony obligation in that the home is now in foreclosure due to petitioner’s failure and refusal to make the mortgage payment.” A contested hearing was held<sup>1</sup> on April 13, 2006, and the district

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<sup>1</sup> Deborah does not appeal the denial of her cross-petition to modify for an increase in spousal support, in which the court determined her financial troubles were primarily self-inflicted by her failure to obtain full-time employment, her support in her home of an adult daughter and grandson with little contribution by the daughter, and the boarding and care of two horses.

court determined that no change in circumstances existed presently because the mortgage was not actually being foreclosed upon at that time. James testified the mortgage was “almost” in foreclosure but failed to present any evidence that foreclosure proceedings had actually been initiated as of the time of trial, even though the mortgage payments were delinquent. After the ruling denying the modification, James filed a motion to enlarge and to submit additional evidence, arguing the purpose of the spousal support was thwarted and now moot because payments were being made through CSRU,<sup>2</sup> and that Deborah’s bankruptcy discharge in February 2006 indicated that foreclosure would be imminent. The district court denied the motions, reiterating that there was no evidence the mortgage was in foreclosure or that foreclosure in and of itself would extinguish James’s spousal support obligation: The court reasoned that the decree contemplated maintaining a residence for the minor children and allowing spousal support to terminate would not be in the children’s best interest because “mortgage payment or not, the children of the marriage are still going to need a place to stay.” The district court further found no change in circumstance because Deborah intended to continue to provide a residence for the minor children, whether it be the marital home or an apartment. James appeals.

James argues that a substantial change in circumstances has occurred because the spousal support payments are no longer being paid to maintain the mortgage on the marital home. The terms of the decree are subject to modification only upon a demonstrated substantial change in circumstances, provided those circumstances were not within the decretal court’s contemplation.

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<sup>2</sup> The income withholding order directed payments be made through the Collections Services Center.

*In re Marriage of Maher*, 596 N.W.2d 561, 564-65 (Iowa 1999). The evidence at trial demonstrated that, although the mortgage payments were delinquent, foreclosure proceedings had not begun nor had the home been sold. The language of the decree specifies that the sale of the home would terminate James's spousal support obligation to Deborah. We agree with the district court that because this triggering event has yet to occur, James failed to demonstrate a change in circumstances warranting the termination of the spousal support. We affirm the denial of James's claim to terminate spousal support on this ground.

However, we agree with James's assertion that the district court, in its ruling on the motion to enlarge, misinterpreted the decree to require the spousal support obligation continue so long as Deborah provides a residence for the minor children. The decree itself, and the later order on the CSRU's motion, clearly delineate that the spousal support award will terminate upon the occurrence of very identifiable events, including the sale of the marital home which the parties owned as tenants in common. Therefore, we disavow this portion of the district court's order on the motion to enlarge but affirm the denial of James's petition to modify spousal support as the triggering event of a sale of the marital home had not occurred.

**AFFIRMED.**