

IN THE COURT OF APPEALS OF IOWA

No. 7-148 / 06-1044
Filed April 11, 2007

**IN RE THE MARRIAGE OF DONNA ANLIKER
AND SCOTT ANLIKER**

**Upon the Petition of
DONNA ANLIKER,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
SCOTT ANLIKER,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

Scott Anliker appeals the district court's ruling dismissing his petition to modify his dissolution decree. Donna Anliker cross-appeals. **AFFIRMED ON BOTH APPEALS.**

Marlis Robberts of Robberts Law Office, Burlington, for appellant.

Scott Schroeder, Burlington, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Scott Anliker appeals the district court's ruling dismissing his petition to modify his dissolution decree.¹ Donna Anliker cross-appeals the district court's refusal to award her attorney fees. Scott currently pays \$1250 per month in alimony. He alleges Donna Anliker's financial position has substantially and materially changed since the decree. Since the decree, Donna has had a few part-time jobs and declared bankruptcy. Her net monthly income, including social security income and current spousal support, is \$1551. As a result, Scott claims his alimony obligation should be modified. We affirm on both appeals.

We review the modification of a dissolution decree de novo. See Iowa R. App. P. 6.4; *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004). We give weight to the district court's findings of fact, but are not bound by them. *McCurnin*, 681 N.W.2d at 327. In order to modify a decree, the law requires proof by a preponderance of the evidence there has been a permanent or continuous substantial change in circumstances not contemplated by the district court at the time of the decree. See Iowa Code § 598.21(8) (2005); *McCurnin*, 681 N.W.2d at 330-331; *In re Marriage of Rietz*, 585 N.W.2d 223, 229 (Iowa 1998).

In this case, both circumstances on which Scott relies were contemplated by the district court. The dissolution court's statements regarding both the possibility that Donna might declare bankruptcy and the possibility she might gain some form of employment are fully set out in the district court's opinion.

¹ The dissolution decree was also the subject of appeal. See *In re Marriage of Anliker*, 694 N.W.2d 535 (Iowa 2005); *In re Marriage of Anliker*, No. 03-1371 (Iowa Ct. App. July 14, 2004)

Therefore, we affirm the district court's ruling denying modification of the dissolution decree. See Iowa Ct. R. 21.29(1)(a), (d), (e).

Donna claims the district court abused its discretion when it refused to award her attorney fees. An award of attorney fees is within the court's discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa 1994). We conclude the district court did not abuse its discretion in refusing to award trial attorney fees.

Donna has also requested appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We award Donna \$500 in appellate attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED ON BOTH APPEALS.