

IN THE COURT OF APPEALS OF IOWA

No. 8-282 / 07-1461

Filed May 29, 2008

**IN RE THE MARRIAGE OF JENNIFER E. COX
AND STEVEN D. COX**

**Upon the Petition of
JENNIFER E. COX n/k/a WILSON,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
STEVEN D. COX,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

Steve Cox appeals, and Jennifer Cox cross-appeals, from the order
modifying the spousal support provisions of the decree dissolving their marriage.

AFFIRMED.

Michael Oliver of Oliver Law Firm, Des Moines, for appellant.

Jennifer Jaskolka-Brown of Sullivan & Ward, West Des Moines, for
appellee.

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

VAITHESWARAN, J.

This appeal involves the district court's modification of a spousal support award.

I. Background Facts and Proceedings.

Steve and Jennifer Cox divorced in 2004. The dissolution decree provided that Steve would pay Jennifer spousal support of \$1650 per month until either party's death or Jennifer's remarriage.

In 2006, Steve lost his job with the company that had employed him for almost twenty-seven years. He petitioned to modify the spousal support portion of the decree. Following an evidentiary hearing, the district court determined that Steve's loss of employment was a material and substantial change in circumstances not contemplated when the decree was entered. The court further found Steve would be unlikely to secure employment at the same level of compensation he previously enjoyed and his lesser earning capacity was permanent. The court reduced the spousal support award from \$1650 to \$1500 per month and ordered Steve to pay \$2000 of Jennifer's trial attorney fees. Steve appealed and Jennifer cross-appealed.

Steve seeks a "substantial decrease[]" in the spousal support order and elimination of the \$2000 trial attorney fee award. In her cross-appeal, Jennifer maintains the spousal support award should not have been reduced and Steve should have been ordered to pay her entire trial attorney fee bill. She also requests appellate attorney fees.

II. Spousal Support.

In determining whether there was a substantial change of circumstances, a court may consider “changes in the employment, earning capacity, income, or resources of a party.” Iowa Code § 598.21C. The dissolution court found that Steve earned \$113,652 in his position as vice-president of marketing. In 2006, the company Steve worked for eliminated his position. Steve received unemployment benefits for six months and a small disability stipend from the Veterans Administration. Unable to meet his expenses on these funds, he began withdrawing money from his Individual Retirement Account. At the time of the modification hearing, he remained without a job, despite significant job-search efforts. He attributed his lack of success to his age of fifty-nine years, a pre-existing heart condition, and his unwillingness to relocate to another State while his son was in high school.¹ Based on these factors, we agree with the district court that Steve’s earning capacity was impaired and that Steve established a substantial change of circumstances.

Steve also had to show that the changes were more or less permanent, not temporary. *In re Marriage of Van Doren*, 474 N.W.2d 583, 586 (Iowa Ct. App. 1991). Jennifer strenuously argues Steve’s lack of employment was temporary. She points to his request for “suspension” of his spousal support obligation, which she characterizes as a concession that he will reenter the workforce. The district court addressed this argument, noting that the focus was not on reentry into the workplace but on his “reduced earning capacity” once he

¹ His contacts in the industry told him his prospects might be better if he was willing to relocate to Chicago or Atlanta, but his son was a junior in high school and he did not wish to disrupt his education.

reentered. On our de novo review, we are persuaded that this reduced earning capacity was more or less permanent.

As Steven established there was a substantial and permanent change of circumstances, he was entitled to a reduction in his spousal support obligation.

Turning to the amount of the reduction, we are not convinced it was too small, as Steve contends. Although he anticipated entering the workforce at “roughly half the income level” he had before, that level was still significantly higher than Jennifer’s.

Jennifer had no employment history in the years preceding the modification action. One month before the modification hearing, she began a part-time job as a substitute dishwasher for a local school district. The job paid \$9.80 per hour and provided gross earnings of no more than \$275.74 per month. Jennifer anticipated working approximately twenty hours per month during the academic year, stating that several health conditions precluded her from working significantly more hours. In addition to that income, she was withdrawing \$1028 per month from funds received in the property settlement. She reported paying \$570 per month in health insurance premiums, \$303.58 per month for prescription and nonprescription drugs, and \$146.38 per month for doctor and dental visits. She testified that, without alimony, she would be unable to pay the mortgage on her townhouse. Given her financial condition and her limited employment prospects and earning capacity, we conclude the district court acted equitably in only making a “slight” reduction in Steve’s spousal support obligation.

III. Attorney Fees.

An attorney fee award rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995).

The district court ordered Steve to pay a significant portion of Jennifer's trial attorney fees, but not the entire amount. The court based the decision on "the parties' respective financial conditions." We discern no abuse of discretion in the court's ruling. *Id.* Accordingly, we reject Steve's request to eliminate the award as well as Jennifer's request to increase the award.

We decline Jennifer's request for appellate attorney fees. Although she was forced to defend Steve's challenges, he was also forced to defend her challenges. For that reason, we conclude Steve and Jennifer should bear their own attorney fees.

AFFIRMED.