IN THE COURT OF APPEALS OF IOWA

No. 8-493 / 07-2173
Filed June 25, 2008

IN RE THE MARRIAGE OF DUANE L. NEFF AND DEBRA J. NEFF

Upon the Petition of
DUANE L. NEFF,
Petitioner-Appellee,

And Concerning
DEBRA J. NEFF,
Respondent-Appellant.

Appeal from the Iowa District Court for Poweshiek County, Daniel P. Wilson, Judge.

Appeal from the district court's denial of respondent's application for modification of the parties' decree of dissolution of marriage. **AFFIRMED.**

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Dennis F. Chalupa and Deborah L. Johnson of Brierly Charnetski, L.L.P., Newton, for appellee.

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

SACKETT, C.J.

Debra Neff appeals the district court's denial of her application to increase and make permanent the alimony awarded her in the January 2002 decree dissolving her marriage to Duane Neff. We affirm.

BACKGROUND. The parties were married in 1985. At the time the decree of dissolution was entered both parties were employed. Duane was the Director of Building and Planning for the City of Grinnell, a job at the time he had held for twenty or more years. His salary then was about $55,000 a year. Debra was employed by the Grinnell-Newburg Community School District and her annual salary was about $25,000 a year. They both suffered from health problems. Duane, who then was forty-eight years old, had hypertension, high cholesterol and Type II diabetes. Debra, forty-five at the time, suffered from multiple sclerosis. Her employer made provisions to accommodate her disability.

The district court divided the parties' assets in what appeared to be a nearly equal division. In addition the court ordered Duane to pay Debra alimony of $500 a month for five years and then $400 a month for five years or until the death of either party or Debra's remarriage. The court expressly considered that Debra's multiple sclerosis might progress and make it impossible for her to work full time. The court went on to say: "Given the health problems of both parties, the court assumes that a modification by one party or both will be filed within the ten-year period as to the amount and/or length of time for payment of alimony."

Debra filed the action for modification that led to this decree in March of 2007. She contended her condition had worsened so that she can no longer

work for the school district on a full-time basis. She requested an award of permanent alimony, attorney fees, and court costs.

The evidence at trial was that Debra was still employed by the school district with an annual salary of $32,292. She had been advised by her doctor she may need to quit her job in the near future as the stress of her employment adversely affects her health. The principal she works under testified Debra's disease since the time of her dissolution has worsened, particularly when it comes to her memory. Debra believed her chances of gaining other employment were not likely. Duane continues in his job with the City of Grinnell, and his current annual salary is $64,112. Duane, who has remarried, has no plans to retire.

The district court, in denying Debra's request for increased and permanent alimony and attorney fees, found (1) the changes in Debra's health condition were contemplated by the trial court at the time of the original decree, (2) Debra's current circumstances are not so extreme as to render the initial understanding of them grossly unfair, and (3) Debra's circumstances do not demand that the original decree cannot in fairness and equity continue to stand.

The court also found that, should Debra become totally disabled, she would be entitled to social security disability of about $1200 a month, might be entitled to disability benefits through the school district[1], would receive about $1000 a month from IPERS, and would be entitled to purchase health insurance

[1] It appears that that this disability insurance would only pay until she began receiving disability social security.

presumably through the school district.[2] The court noted it was not clear if Debra would qualify for Medicare if she qualified for social security disability. The court also noted Debra had assets to assist her in her support.

Anyone seeking modification of a dissolution decree holds the burden to establish entitlement by a preponderance of the evidence. *Mears v. Mears*, 213 N.W.2d 511, 515 (Iowa 1973). The changed circumstances must not have been in the contemplation of the court when the original decree was entered. *In re Marriage of Full*, 255 N.W.2d 153, 159 (Iowa 1977). The changes must be more or less permanent and continuous, not temporary. *In re Marriage of Carlson*, 338 N.W.2d 136, 141 (Iowa 1983). The initial decree is entered with a view to reasonable and ordinary changes that may be likely to occur. *Mears*, 213 N.W.2d at 514; *In re Marriage of Skiles*, 419 N.W.2d 586, 589 (Iowa Ct. App. 1987) (finding medical problems associated with the aging process are in contemplation and knowledge of trial court).

Debra argues she has met the necessary burden for modifying the decree to order permanent alimony of $500 a month to be increased to $1000 a month after she certifies she is unable to work. She argues that her condition is deteriorating and, citing *In re Marriage of Wessels*, 542 N.W. 2d 486, 489 (Iowa 1995), argues that a deteriorating condition can support a modification even if suffered by the applicant at the time the dissolution decree is entered.

The district court distinguished *Wessels* as do we. In *Wessels*, the former wife was awarded rehabilitative alimony and she pledged she would make every

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[2] Her testimony was that the insurance would cost her about $527 a month.

reasonable effort to become self-sufficient. *Wessels*, 542 N.W.2d at 490. While at the time of the dissolution she had begun to experience psychiatric problems, the court found her life since the dissolution had gone into a drastic downward spiral and said, "But only by hindsight, in view of what has transpired since the entry of the decree can it be said that it was unrealistic to hope she could become self-supporting." *Id.* at 488. Furthermore, at the time the wife sought modification the court determined she was not capable of holding a job nor was the court persuaded she would ever be able to do so. *Id.* at 488-89. The court found the condition a change not contemplated by the court at the time of the initial decree and held it qualified "as the sort of rare and unique change that demanded the extraordinary relief the former wife sought. *Id.* at 490.

In the case before us, the dissolution court clearly was aware of Debra's condition and the possibility it would deteriorate. Furthermore, Debra has not shown that her financial situation will drastically change should she go on disability. With her projected social security disability and IPERS she will receive about $2200 a month, or $26,400 a year, much of which will not be subject to federal and state income taxes and none of which will be subject to IPERS or FICA deductions. We affirm.

AFFIRMED.