

JIMMY H. DAVIS *v.* MAUDINE DAVIS

5-3983

406 S. W. 2d 704

Opinion Delivered October 10, 1966

1. DIVORCE—MODIFICATION OF DECREE—WEIGHT & SUFFICIENCY OF EVIDENCE.—No error was found in trial court's action in refusing to modify its former decree as to alimony payments to divorced wife because of changed conditions with respect to her earnings where it was not shown she was self sustaining or that appellant's capacity to pay alimony had been diminished.
2. DIVORCE—APPEAL—ALLOWANCE OF ADDITIONAL ATTORNEY'S FEE.—Additional attorney's fee to counsel for appellee in the sum of \$100 allowed for services rendered on appeal.

Appeal from Woodruff Chancery Court, *Ford Smith*, Chancellor; affirmed.

Fletcher Long, for appellant.

John D. Eldridge, for appellee.

OSRO COBB, Justice. The parties to this appeal were divorced by decree filed October 9, 1965, the decree providing that appellant should pay appellee alimony of \$100.00 per month. No children had been born of their marriage.

After the decree of October 9, 1965, appellee sought employment and obtained a job at the Arkansas Baptist Hospital in Little Rock. On December 30, 1965, some 80 days after the divorce decree, appellant filed his petition to modify the decree by abating and deleting all provisions as to further alimony payments because of the changed conditions with respect to appellee's earnings.

Following hearing, ~~the~~ Chancellor denied appellant's petition for modification and from that action of the trial court comes this appeal.

Appellee testified in detail as to her monthly living expenses which aggregated \$281.73, without any allowance for emergencies that might occur; that she was then earning approximately \$200.00 per month in actual take home pay and that she was in dire need of the supplemental income from the alimony payment.

While it is true that appellee may eventually become self sustaining, this was not the case as of the time of the hearing. Furthermore, there was no showing that appellant's capacity to pay the alimony had been diminished; indeed, there was some evidence that appellant's financial situation was being improved.

We, therefore, find no error in the action of the trial court in refusing to modify its former decree as to alimony payments to appellee.

See *Pledger v. Pledger*, 199 Ark. 604, 135 S. W. 2d 851 (1940); *McConnell v. McConnell*, 98 Ark. 193, 136 S. W. 931 (1911).

An additional attorney's fee to counsel for appellee in the sum of \$100.00 is allowed for services rendered in this Court.

Affirmed.
