IN THE COURT OF APPEALS OF IOWA

No. 0-255 / 89-1316

FILED
SEP 26 1990
CLERK SUPREME COURT

IN RE THE MARRIAGE OF LAURA ANN BERGFELD AND JEROME JOSEPH BERGFELD

Upon the Petition of

LAURA ANN BERGFELD,

Appellant,

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And Concerning

JEROME JOSEPH BERGFELD,

Appellee.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Wife appeals from the district court's refusal to modify a dissolution decree. **AFFIRMED AND REMANDED.**

Stephen W. Scott, of Kintzinger, Van Etten, Setter, Pearce & Scott, Dubuque, for the appellant.

Richard G. Lovig and David L. Clemens, of Clemens, King & Lovig, Dubuque, for the appellee.

Considered en banc.

OXBERGER, C.J.

Laura and Jerome Bergfeld were married in 1975. Three children were born of the marriage. The marriage was dissolved in February 1988. The dissolution decree placed the children in joint legal custody and in Laura's primary physical care. The decree directed Jerome to pay child support of $75 per week for all three children; the decree commented that this award was "based on [Jerome's] being employed and earning at least $1,200 per month". Jerome was unemployed at the time of the dissolution.

In June 1988 Laura filed an application to modify the decree, requesting a larger child support award. She alleged that since the dissolution decree Jerome's income had nearly doubled, from $1,200 per month gross to about $2,300 per month gross, because he had been recalled to work at a Caterpillar factory from which he had been laid off several years before. In an amendment to her petition, Laura requested various other relief, including a modification requiring each party notify the other of any accidents or injuries suffered by the children.

The district court denied both Laura's petition to modify the decree and a separate modification petition filed by Jerome. In denying Laura's petition, the court commented that Jerome's return to work at Caterpillar was contemplated at the time of the dissolution decree. The court also commented that both parties had enjoyed a

substantial increase in employment income since the dissolution decree. Laura has appealed.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially where the credibility of the witnesses is involved, but are not bound by them. Iowa R. App. P. 14(f)(7).

A child support provision of a dissolution of marriage decree is modifiable upon a showing by a preponderance of evidence, that material and substantial changes in circumstances have occurred since the decree was entered. Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). (authorities omitted).

After evaluating the record, we find that Jerome's increased income represents a significant change of circumstances not within the contemplation of the parties at the time of their dissolution decree. The decree was based on a salary of $1,200 per month, not his current salary of at least $2,300 per month.

The trial court filed its ruling on July 10, 1989. The Iowa Supreme Court on September 29, 1989, adopted guidelines for determining child support obligations of parents. The guidelines were adopted pursuant to both state and federal mandates. The purpose of the legislation was to establish uniformity in the setting of child support payments. The guidelines provide "the trial court shall not vary from the amount of child support which would

result from application of the guidelines without a written finding the guidelines would be unjust or inappropriate." We remand this matter to the district court to conduct a hearing pursuant to the Iowa Supreme Court's Child Support Guidelines of September 29, 1989. This court does not retain jurisdiction. Pending said hearing on remand, we order child support be paid as ordered by the original trial court decree.

Laura also claimed the trial court erred in failing to modify the decree to specifically provide each party should notify the other party of any accidents or injuries suffered by the parties' children. Although we do not find it necessary to modify the trial court's ruling, we do remind the parties the awarding of joint custody to the parties is intended to continue the sharing of the responsibilities of parenthood. A failure to meet these obligations will bear greatly on the court's evaluation of continued joint custody in the event of future litigation.

Laura also seeks modification of the trial court's denial of attorney fees at the trial. Because we have remanded the issue of child support, the trial court may reconsider its ruling on trial attorney fees in light of its ruling on remand.

Laura asks for appellate attorney fees. In evaluating such requests, we consider the needs of the party making the request and the ability of the other party to pay. In

re Marriage of Orgren, 375 N.W.2d 710, 714 (Iowa App. 1985). Jerome's ability to pay such fees is documented in the record. So is Laura's inability to pay. We order Jerome to pay $750 of Laura's appellate attorney fees.

AFFIRMED AND REMANDED.