

FILED

SEP 6 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

190

IN RE THE MARRIAGE OF CAROLE LOUISE PERRY AND WILLIAM VANCE PERRY

UPON THE PETITION OF	)	
CAROLE LOUISE PERRY,	)	Filed September 6, 1984
now Carole Louise Heck,	)	
	)	
Petitioner-Appellant,	)	<u>4-222</u>
	)	<u>83-1319</u>
AND CONCERNING	)	
WILLIAM VANCE PERRY,	)	
	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Boone County, Carl Petersen,
Judge.

Petitioner-wife appeals from the trial court's decree granting a modification
of support and custody provisions of the parties' dissolution decree. **AFFIRMED**
AS MODIFIED.

John Friederich of the John Friederich Law Firm, Perry, for petitioner-
appellant.

Michael J. Mahoney and Jim P. Robbins of the Mahoney, Donelson
& Robbins, P.C., Boone, for respondent-appellee.

Considered by Oxberger, C.J., Donielson, and Schlegel, JJ.

OXBERGER, C.J.

Petitioner has appealed from modification of child support payments to her, asserting the court did not accurately determine the increase in child support awarded. We affirm as modified.

The marriage of Carole and William Perry was dissolved March 30, 1979, when petitioner, Carole, was given custody of three of the couple's children, Debra, William Jr. and Robert. Respondent, William was given custody of the couple's other child, DeNette. Carole was awarded \$100 per month per child in child support. Only the two minor children, William Jr. aged fifteen at the time of the modification trial, and Robert, aged thirteen, remain at home. Petitioner brought action for modification regarding the custody of William Jr. and support of Robert. William Jr. had been living with his father for some time under an arrangement between the parents and the trial court gave custody of him to his father. It also determined there had been a substantial change of circumstances regarding the support of Robert, since William's income had doubled from the time of the original decree to \$40,000 per year and because inflation had affected the parties. The court determined that it was in Robert's best interests to increase child support. The court held that Carole had indicated Robert's expenses were \$350 per month. However, the court considered that William had also been given custody of William Jr. and that expenses for William Jr. would be higher because he was older than Robert. For these reasons the court modified the increase in support it felt was due and increased it fifty percent, or \$150 per month. The court further refused to provide for a cost-of-living increase in the support award. Carole appeals from support provisions of the order only.

Carole asserts: (1) the figure reached by the court in child support was in error because it did not accurately reflect expenses of Carole in raising Robert,

Robert's increased needs, and the disparity of the parties' incomes; (2) that support should not have been reduced because William was given custody of William Jr.; and (3) the cost-of-living adjustment clause should have been included in the support award.

I. Review of Child Support Modification

Our review is de novo and, although we give weight to the lower court's decisions on the facts, we are not bound by them. In re Marriage of Bauder, 316 N.W.2d 697 (Iowa Ct. App. 1981); Iowa R. App. P. 4, 14(f)(7).

Child support may be modified only when there is a substantial change in circumstances. Mears v. Mears, 213 N.W.2d 514 (Iowa 1973); Iowa Code § 598.21(8)(1983). The new circumstances must not have been within the contemplation of the court when the decree was entered and must involve permanent changes. Id. at 515. A substantial change in the income of one of the parties may be relied upon as a basis of modification of child support. Spaulding v. Spaulding, 204 N.W.2d 634 (Iowa 1973). The effects of inflation may be considered by the court. Page v. Page, 219 N.W.2d 556 (Iowa 1974).

The trial court found a substantial change in circumstances had occurred warranting a change in support on behalf of Robert. We agree with the trial court, but modify the increase it made.

II. Determination of Child Support Award

1. Expenses Involved

The parties disagree on the amount of expenses Carole faced. She indicates in her answers to William's interrogatories her expenses are \$1085, but in her financial statements includes other debts owed to total \$1150.75. Both the trial court and William have pointed out that some of the expenses appear to be duplicated, but Carole explains in her reply brief that these include expenses to which her husband, Ron, has contributed. His total contribution to their support, including his salary and benefits, is \$635.

A step-parent is not required to support his spouse's children that he has not adopted, but his contributions may be considered in determining adequate support by the natural father. Mears v. Mears, 213 N.W.2d at 518. Here we consider the contributions of Carole's husband, and in order to see the total financial picture, we must look at all the expenditures involved as well. The amount left to Carole's family, including the \$100 child support she now gets and her husband's income, after expenses, is approximately \$80.

There is also confusion as to the expenses incurred in supporting Robert. William and the trial court state Carole testified her expenses regarding Robert are \$350 per month. However, a review of the transcript indicates that Carole said she believed a \$350 contribution in child support from William would assist her, but that total expenses in raising Robert are \$500.

In her financial statement, Carole indicates she is asking for \$700 per month in child support, and testified it would be used for Robert's expenses to raise the family standard of living, and to begin a savings account for all her children. The purpose of child support is to "protect and promote the best interests of the child," not the entire family. Iowa Code § 598.21(5)(1983). Carole indicated the figure of \$500 per month relates to support of Robert, and this is the appropriate amount to consider.

The trial court declined to award Carole the full amount requested, in part because William Jr. was older and his father would face higher expenses than Carole would for Robert. It must be noted, however, that there is only a twenty-two-month difference between the boys and Carole will also soon face the added expenses of an older child.

Costs of transporting each child to visit the noncustodial parent were ordered borne by the parent the child was visiting. Carole argues persuasively that if she pays the entire cost of transporting William Jr. to visit her, it will cut

into funds which could be expended towards Robert, or force her to limit the visits of William Jr. She testifies the costs are, at a minimum, \$600 per year. It would ignore the overall scheme of this award of child support to not require William to share in these expenses.

2. Disparity of Incomes

Both parties have seen an increase in their respective incomes, but William's income remains much higher than Carole's. We have indicated support of a minor child is not necessarily borne equally between the parties, but is shared in proportion to the amount each is able to contribute. In re Marriage of Heineman, 309 N.W.2d 151 (Iowa Ct. App. 1981). The courts have frequently adjusted support payments to reflect disparity between the parties' incomes. See In re Marriage of Mikelson, 299 N.W.2d 670 (Iowa 1980); Novak v. Novak, 220 N.W.2d 592 (Iowa 1974); Spaulding v. Spaulding, 204 N.W.2d 639 (Iowa 1973).

Carole's income at the time of the original decree was \$3195 and rose to \$7159 at the time of the modification trial. Considering her husband's contributions, their total current income is \$14,779. William's income has doubled, from \$20,000 to \$40,000, resulting in a 3:1 difference between his and her income.

Considering the relative incomes and expenses of each party, the needs of Robert, and other factors described at section 598.21(8) of the Iowa Code, we modify the trial court's support award and increase it to \$350 per month. Transportation costs of William Jr.'s visits should also be shared, and an additional \$25 per month in child support is awarded for such transportation costs.

III. Change in Custody as a Factor

Carole further argues the court erred in considering as a factor the change in custody of William Jr. from her to his father. She says the increased burden of supporting William Jr. placed on his father should not be considered when deciding what support should be paid for Robert. Iowa courts have looked to the financial

changes inherent in custodial changes as a factor in deciding child support. See Burrell v. Burrell, 256 Iowa 490, 127 N.W.2d 78 (1964); Andreesen v. Andreeson, 252 Iowa 1152, 110 N.W.2d 275 (1961). We agree with the trial court's conclusion of law on this point.

IV. Cost-of-Living Clause

An adjustment for cost-of-living increases is allowed to be included when a support award is made. In re Marriage of Stamp, 300 N.W.2d 275 (Iowa 1980). Carole requested the trial court include a provision increasing child support payments by the lesser of the increase in William's gross salary or the increase in the National Consumer Price Index.

The trial court refused to grant the clause, for the reason that William will face the same ravages of inflation that Carole will. The record reflects, however, that William is expected to receive future raises and has received such raises in the past. Since his income is three times that of Carole's, he is also more able to withstand inflationary trends. William argues the clause is substantially different from that approved in the Stamp decision, but it is similar in nearly all respects to it, and provides protection for the payor in the event his salary does not keep pace with inflation. Id. at 276. It differs in the respect that the Stamp decision provided for an increase or decrease by the same percentage as the National Consumer Price Index. Id. We modify the order to include a cost-of-living clause to raise or lower payments under the same clause used in Stamp, as follows:

On or before each anniversary date of this decree, the parties shall file a stipulation with the Clerk of this Court providing for increased or decreased child support payments based upon the following: Child support payments shall be increased or decreased by the same percentage as the percentage change in the National Consumer Price Index as published by the United States

Department of Labor for the most recent twelve month period for which data is available, provided that Respondent's (William's) gross income for the like period has increased by at least the same percentage. If Respondent's gross income increased by a lesser percentage, then the payments to Petitioner (Carole) shall increase by this lesser percentage. In the event Respondent claims the benefit of the above limitation, he shall submit copies of his federal tax returns or other sufficient proof of income to Petitioner for the relevant years. If the parties are unable to stipulate to the correct adjustment amounts, either may request that the Court determine the same, either itself or by appointment of a special master. The cost of such proceedings shall be shared equally by the parties and any adjustment made shall relate retroactively if necessary to the appropriate anniversary date.

Id

Our modified order is to be applied retroactively to the date of the trial court's order. Spaulding v. Spaulding, 204 N.W.2d 634, 636 (Iowa 1973).

AFFIRMED AS MODIFIED.