IN THE COURT OF APPEALS OF IOWA

No. 9-648 / 98-2256
Filed December 13, 1999

FILED
DEC 13 1999
CLERK SUPREME COURT

IN RE THE MARRIAGE OF VICKY L. POTTER AND LAWRENCE D. POTTER, JR.

Upon the Petition of
VICKY L. POTTER,
Petitioner-Appellee,

And Concerning
LAWRENCE D. POTTER, JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, John Bauercamper, Judge.

On appeal from the modification of a child support award, the appellant claims the district court failed to comply with the retroactivity requirements of Iowa Code section 598.21(8) (Supp. 1997). He also claims the court failed to establish a periodic payment plan for the retroactive support. **AFFIRMED AS MODIFIED AND REMANDED.**

Brian J. Kane of Kane, Norby & Reddick, P.C., **Dubuque**, until withdrawal and then **Stuart G. Hoover** of Naylor, Hoover, **Peters & Blair, P.C.**, Dubuque, for **appellant.**

Mary M. Schumacher, Dubuque, for **appellee.**

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

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HECHT, J.

Lawrence D. Potter appeals from the modification of a child support award and claims the district court failed to comply with the retroactivity requirements of Iowa Code section 598.21(8) (Supp. 1997). He also claims the court failed to establish a periodic payment plan for the retroactive support. We affirm as modified and remand to the district court.

I. Factual Background and Proceedings. Lawrence Potter ("Lawrence") and Vicky Potter ("Vicky") were married on June 12, 1994. They were divorced on October 2, 1996. The parties have one child, Daniel Logan Potter ("Logan"), born October 10, 1994. Vicky was awarded primary physical custody of Logan. Lawrence was awarded visitation rights and was ordered to pay $502 per month in child support.

On June 15, 1998, Lawrence filed a petition for modification of the visitation provisions of the decree. On July 7, 1998, Vicky filed her answer and counterclaim requesting a modification of the an ount of child support. On October 27, 1998, the district court denied Lawrence's motion for modification of visitation and granted Vicky's motion for modification of child support. The amount of child support was increased to $634 per month and made retroactive to June 1998, the date Lawrence filed his motion for modification of visitation.

Lawrence filed a motion pursuant to Iowa Rules of Civil Procedure 179(b) on November 3, 1998. The district court denied his motion on November 23, 1998. Lawrence appeals.

II. Standard of Review. Modification of dissolution decree actions are tried in equity and review is thus de novo. Iowa R. App. P. 4; *In re Marriage of Trickey,* 589 N.W.2d 753, 756 (Iowa App. 1998). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek,* 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court especially when considering credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Wood,* 567 N.W.2d 680, 681 (Iowa App. 1997).

III. Retroactive Modification. Lawrence contends the district court misapplied Iowa Code section 598.21(8) as amended by the 1997 legislature.[1] As amended, section 598.21(8) states, in pertinent part:

> Judgments for child support or child support awards entered pursuant to this chapter . . . which are subject to a modification proceeding may be retroactively modified only from three months *after the date the notice of the pending petition for modification is served on the opposing party.* . . . Any retroactive modification which increases the amount of child support . . . under this paragraph shall include a periodic payment plan.

Iowa Code § 598.21(8) (1999) (emphasis added). The district court made the modification of support retroactive to June, 1998, the month in which Lawrence commenced his action to modify the visitation provisions of the dissolution decree. Vicky served her counterclaim for modification of child support on July 9, 1998.

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[1] Section 598.21(8), as amended, applies to modification actions pending on or after July 1, 1997.

Vicky asserts we should construe the statute liberally to allow the district court to set the retroactive date at any point in time. We are not inclined to do so. When the language of a statute is unambiguous, we interpret it based on what the legislature said rather than on what it might have said. Iowa R. App. P. 14(f)(13). We are not permitted to search beyond the express terms of a statute when the language is plain and its meaning is clear. *In re Marriage of Engler,* 532 N.W.2d 747, 750 (Iowa 1995). The language of section 598.21(8) is clear, and we have interpreted it according to its plain meaning. Consistent with the applicable statute, we hold the retroactive child support increase ordered by the district court shall apply to all child support payments due and payable in and after October, 1998.

IV. Payment Plan. Section 598.21(8) requires the establishment of a periodic payment plan for any retroactive modification which increases the amount of child support. Lawrence asserts and Vicky agrees the district court should have established such a payment plan. Consequently, we remand to the district court for entry of a periodic payment plan pursuant to section 598.21(8) and in accordance with this opinion.

Costs of this appeal are taxed equally to the parties.

AFFIRMED AS MODIFIED AND REMANDED.