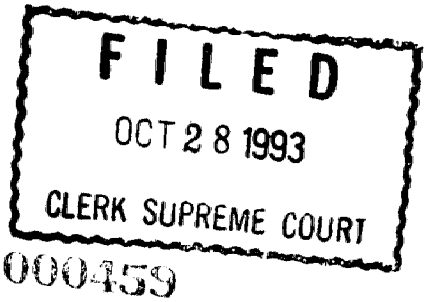
IN THE COURT OF APPEALS OF IOWA

No. 3-258 / 92-1266



IN RE THE MARRIAGE OF RONALD LAVERNE SCHULTZ AND JULIE MARY SCHULTZ

Upon the Petition of
RONALD LAVERNE SCHULTZ,

Petitioner-Appellee,

And Concerning
JULIE MARY SCHULTZ,

Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge.

The respondent appeals a judgment of the district court denying her request for modification of child support. **AFFIRMED.**

Lynn Wickham Hartman of White & Johnson, P.C., Cedar Rapids, for appellant.

Gordon R. Gibson of Allen, Vernon, Gibson & Robison, Marion, for appellee.

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, guardian ad litem for minor children.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ. Donielson, J., takes no part.

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SACKETT, J.

The question in this appeal is whether the trial court correctly refused the custodial mother's petition to modify a child support obligation to increase child support in the five-year period following the dissolution where the dissolution decree provided for the father, also a custodial parent, to pay a greater amount of support after the five-year period. We affirm the trial court.

The marriage of petitioner-appellee Ronald Laverne Schultz and respondent-appellant Julie Mary Schultz was dissolved in February 1988. The dissolution did not go to trial. Ronald and Julie were both represented by counsel, and the parties entered into an agreement or stipulation as to custody, support, and division of property. In entering the dissolution, the trial court approved the stipulation and made it a part of the dissolution decree. Accordingly, the parties were granted joint custody of their three children born in 1974, 1978, and 1979. Julie was made the physical custodian for the first six months of each year, and Ronald was made the physical custodian for the second six months. Ronald was ordered to pay Julie child support of $585 a month for twelve months a year, but Julie was not ordered to pay Ronald any child support. Ronald also was ordered to pay Julie alimony for five years in the amount of $100 per month.

The stipulation incorporated in the decree recited certain facts that the parties took into consideration in

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arriving at the child support figure. These facts were that Ronald, a chiropractor, was working to establish a practice; there were cash flow limitations on Ronald's business; and Ronald was paying twelve months of support even though he had physical care for six of these months. It was further included in the stipulation that the amount fixed for child support would not change for the first five years after the decree but, at the end of the five years, the child support obligation would be adjusted according to a formula agreed upon by the parties, generally applying the Iowa Supreme Court Guidelines in effect at that time. The framework set for modification was there would be a separate computation made as if each party was the custodial parent for the entire year and Ronald would pay Julie the difference.

Julie did not wait for the five years to expire but on July 5, 1991, she filed an application for modification. On July 1, 1992, the trial court filed its decision denying Julie's request. The five-year period following the dissolution expired on February 23, 1993.

Julie contends she has shown a substantial change of circumstances since the entry of the decree and the child support should had been modified to the date of her filing of the application for modification. Julie advances increases in Ronald's income and her decision to cut her income in half and return to college are factors that were not in the trial court's contemplation when the decree was

entered and these factors call for a modification. She contends the trial court should modify her dissolution decree and the language of the decree does not preclude her requested modification.

To modify a dissolution decree requires proof that there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514 (Iowa 1973). Not every change in circumstances is sufficient; rather, the change in circumstances must be permanent or continuous rather than temporary, see In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983), and it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice. Id.

Ronald's income both before the dissolution and after the dissolution has been from his chiropractic practice. His adjusted gross income for federal tax purposes in 1991 was $88,812. The trial court found Ronald's net income in 1988 had been about $48,500. In 1988 Julie had what she refers to as an annual gross[1] income of $12,000, and she was employed full-time. She had earned a little less than $14,000 in 1991. At the time the modification was filed, it was Julie's intent to return to college on a full-time basis and work part-time.

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1. We assume this is adjusted gross income as defined for federal tax purposes, too.

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Ronald has since the dissolution remarried, and he and his current wife are the parents of two small children. Ronald's current wife works full-time in the business but does not draw a salary. Ronald contended her services were worth $30,000 a year to the business.

Ronald has had a substantial increase in income. Generally, such an increase would warrant modification of a decree to increase his support obligation. See In re Marriage of Eglseder, 448 N.W.2d 703, 704 (Iowa App. 1989).

The question is whether the parties agreed and the dissolution court incorporated in the decree an agreement not to modify until five years had passed and whether, if such an agreement was made, it should be honored.

Our reading of the stipulation makes it clear both parties were represented by counsel and apparently reached a compromise. The parties set forth facts that had gone into their negotiations. It is clear to us from reading the terms of the stipulation that there was an agreement not to seek an increase in child support for five years and to set up the framework which included using the child support guidelines to compute the additional support. It also is clear it was anticipated Ronald's income would increase.

The court will not approve agreements that will jeopardize the welfare of children. However, it is also necessary there be some integrity in dissolution agreements because, if there is not, incentives for settlement will be

lessened. The trial court in rejecting Julie's application found:

> Nevertheless, the decree and the stipulation entered in this case recognized certain matters. These relate to what was contemplated by the parties at the time of the entry of the decree of dissolution. At that time, it was within the contemplation of the parties that the petitioner was having cash flow problems with his business. It reflects the problems which the petitioner was having establishing a lucrative practice; and based upon these limitations, the parties stipulated to a fixed amount of support for a period of five years. . . . [A]ny underlying agreement of the parties or any understanding of the parties at the time the stipulation is signed is ultimately merged into the dissolution decree and the stipulation as such is not binding on the Court, nor are courts bound by the subjective understanding of the parties . . . .

We agree with the trial court that the fact Ronald's income has increased under the unique circumstances of this case does not justify modification. We consider the agreement of the parties that support remain at the established level for five years, the debts Ronald assumed in the dissolution, the fact Ronald has physical care of the children for six months of the year and continues to pay Julie support during this period, the fact Ronald provides substantial other support for the children, the fact there are sufficient resources by the allocations made to meet the children's needs, and the fact the decree is now subject to modification according to a fair formula that will apply the current child support guidelines.

Julie also contends the fact she is returning to school is a substantial change of circumstances because she

will incur debt and her income will be cut in half. The trial court found this was contemplated when the decree was entered. Julie contends the course of study she is pursuing was not within the contemplation of the court when the decree was granted. The question is whether a custodial parent's desire to receive additional education and change careers justifies a modification of support provisions. Education is a prized commodity in our society, and we recognize Julie may be hampered in career development by her current educational status. However, Julie has a support obligation to her children. Julie did not lose her employment, she gave it up to spend additional time and money educating herself. Julie intends to be a nurse and hopefully will have better employment opportunities, although there are no guarantees she will have a better salary. In the meantime, she will lose income and incur debt. There is a point in life where parents may have to put their own careers on hold to meet the immediate needs of their children. There are times in life when a child's needs must take precedence over parents' desires. See In re Marriage of Weiss, 496 N.W.2d 785, 789 (Iowa App. 1992). Voluntary reductions in income are not grounds for modification.

Julie also complains about the allocation of the fees for an attorney for the children. When the application for modification was filed, Ronald sought physical care of the children on a full-time basis. An attorney was appointed

for the children, and Ronald subsequently withdrew his modification request. The trial court ordered the fees for the attorney for the children be paid one-half by each party. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). We find no abuse of discretion.

Julie also asks for attorney fees on appeal. We deny this request.

AFFIRMED.