IN THE COURT OF APPEALS OF IOWA

No. 7-712 / 97-859

IN RE THE MARRIAGE OF MAGNUS J. STINER AND SUE LYNN STINER

Upon the Petition of
MAGNUS J. STINER,

Appellee,

And Concerning
SUE LYNN STINER,

Appellant.

FILED
JUL 24 1998

Appeal from the Iowa District Court for Hardin County, Carl E. Peterson, Judge.

On appeal from the denial of her petition to modify the parties' dissolution decree, the appellant argues the increase in their daughter's college expenses warranted a modification of the appellee's child support obligation. **AFFIRMED.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellant.

Larry W. Johnson of Walters & Johnson, Iowa Falls, for appellee.

Considered by Vogel, P.J., and Mahan, and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HAYDEN, S.J.

Magnus and Sue Lynn were divorced in 1980. They have one child, Glynda, born December 21, 1976. The dissolution decree was modified in 1989 to provide that Magnus would pay $250 per month in child support. The support is to continue until Glynda reaches age twenty-two as long as she is a full-time college student.

Glynda attended one semester of community college and then transferred to the University of Iowa in January 1995. She originally intended to major in Television/Radio Journalism but is now pursuing a double major in Asian Studies, with an emphasis in Japanese and Global Studies. During Summer 1996 Glynda studied Japanese. Upon the recommendation of college officials, she spent the next semester studying in Japan. The cost of studying in Japan increased her 1996-97 college expenses by fifty percent. She anticipates graduating in May 1999.

In August 1996 Sue Lynn filed a petition to modify Magnus's support obligation. She alleged the increasing costs of college, including the expenses associated with Glynda's study abroad, constituted a substantial change in circumstances.

The district court denied the petition. It held the increased cost of college was within the contemplation of the court when it established Magnus's child support obligation. It also found Glynda's unilateral decisions to obtain a double major, to go to Japan, and to extend the amount of time she is in college did not constitute a change of circumstances warranting an increase in support. Sue Lynn's rule 179(b) motion was denied.

In equity actions our review is de novo. Iowa R. App. P. 4. We give weight to the

findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Bolick*, 539 N.W.2d 357, 359 (Iowa 1995).

Modification of a decree of dissolution can only be justified by a substantial change in circumstances the trial court did not contemplate at the time of entrance of the original decree or at the time of a subsequent intervening modification proceeding. *In re Marriage of Jacobo*, 526 N.W.2d 859, 864 (Iowa 1995). The change must be permanent rather than temporary. *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995). Provisions for child support payments in a decree or modification are final as to the circumstances then existing. *Mears v. Mears*, 213 N.W.2d 511, 515 (Iowa 1973). The "then existing" circumstances are those which were known or, through reasonable diligence, should have been known to the court when the decree or order was entered. *In re Marriage of Chmelicek*, 480 N.W.2d 571, 574 (Iowa App. 1991) (quoting *Harwell v. Harwell*, 253 Iowa 413, 417, 112 N.W.2d 868, 871 (1962)).

On appeal from the denial of her petition to modify the parties' dissolution decree, Sue Lynn argues the increase in their daughter's college expenses caused by a semester in Japan warranted a modification of the appellee's child support obligation. She argues the increased college expenses were not within the contemplation of the court when it modified the decree in 1989. From our review of the 1989 modification, we find the court contemplated Glynda's matriculation after graduation from high school. The order explicitly provides for continued support from Magnus during college for the period allowed by statute. *See* Iowa Code § 598.1(2) (1989). Increased costs over time are normally within the

contemplation of the court and are considered when setting support obligations. *See Chmelicek*, 480 N.W.2d at 575. We do not find the normal increase in college costs to be the basis for a modification under the circumstances before us. Nor do we find the one-time expense of a semester abroad a significant change in circumstances requiring a modification of Magnus's support obligation.

Effective July 1, 1997, Iowa Code chapter 598 was amended, setting limits on the college support obligation which may be imposed on parents. Iowa Code § 598.21(5A). This section restricts support to no more than one-third of total college costs which "shall include the reasonable costs for only necessary postsecondary education expenses" at an in-state public institution. *Id.* The record reveals the estimated cost for a resident student at the University of Iowa to be $ 9,372, including over $2,500 for personal expenses and transportation, which past cases have not included as necessary postsecondary education expenses in calculating a parent's support obligation. *See e.g. In re Marriage of Griffin*, 570 N.W.2d 258 (Iowa App. 1997); *In re Marriage of Springer*, 538 N.W.2d 897 (Iowa App. 1995); *In re Marriage of Hess*, 522 N.W.2d 861 (Iowa App. 1994). Even if the court had determined a modification was justified in this case, any support payments accruing after July 1, 1997 would have been limited to no more than the amount Magnus currently pays.

Having considered all of the assertions and arguments made by Sue Lynn, we find the circumstances before us either were within the contemplation of the court in the 1989 modification or do not constitute a substantial change in circumstances justifying modification of Magnus's support obligation. We therefore affirm the decision of the trial

court. Cost of this appeal are taxed to Sue Lynn Stiner.

AFFIRMED.