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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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DENISE L. DILSE,
Plaintiff-Appellee,
vs.
STEVE C. GEORGE,
Defendant-Appellant.

8-640
88-534

Appeal from the Iowa District Court for Polk County (No. CL26-14729), Jack D. Levin, Judge.

Defendant father appeals the modification of his child support obligation. **AFFIRMED AS MODIFIED.**

Thomas A. DeSio and Roger J. Kuhle of Kuhle & Sanders, P.C., Des Moines, for defendant-appellant.

Thomas P. Slater of Meyer, Slater & Bauer, Des Moines, for plaintiff-appellee.

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

DONIELSON, J.

Defendant father Steve George appeals from the court order modifying his child support obligation. The court increased his obligation to $400 per month. It also stated a precise visitation schedule and awarded the mother attorney fees. Steve challenges the size of the monthly obligation, the award of attorney's fees, and certain specifics of the visitation schedule. He also requests attorney fees on appeal.

Denise Dilse and Steve George, who have never been married but once cohabited, are the parents of a boy born in 1978. Steve acknowledges paternity. A 1974 court order directed Steve to pay child support of $125 per month. Steve is current on this obligation, and in 1985 he voluntarily increased his payments to $200 per month. He also has paid various medical and clothing expenses for the child. He has engaged in substantial visitation by agreement of the parties; this has generally gone well, but there have been minor disagreements about specific holidays and about the precise timing of weekend visits.

In 1987, Denise filed the present petition to modify the child support award established in 1978. At a hearing, the evidence disclosed the following facts. In 1978 Steve was employed as a pressman, with gross earnings of about $23,000 per year and net earnings of about $18,000 per year. In 1987, Steve still had the same job but pay raises

and overtime had increased his earnings. His gross income was over $48,000 in 1985 and over $51,000 in 1986. However, his supervisor testified that overtime at the plant was expected to drop substantially due to new machinery and the addition of a third shift. In 1978, Denise was an ADC recipient. In 1987, she earned a gross income of about $1,000 per month from self-employment as a cleaning person, wallpaper hanger, and painter. Denise supports two other children in addition to the child involved here; Steve pays child support for one other child.

Our review of this matter is de novo. Iowa R. App. P. 4. Nevertheless, the trial court has reasonable discretion in determining whether modification is warranted, and that discretion will not be disturbed on appeal unless there is a failure to do equity. In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983).

I. Steve claims that the trial court's award of child support is inequitable and should be reduced. He contends that $300 a month would more equitably reflect the change in the parties' circumstances since the original decree.

As an initial matter, Steve argues that factors established under Iowa Code section 598.21 apply to this action. The original decree was entered pursuant to Iowa Code Chapter 675, which authorizes the court to order support payments from parents of children born out of

wedlock. There is no provision in Chapter 675 for a modification award except that continuing jurisdiction exists in the district court until the judgment has been satisfied. Iowa Code § 675.31. Steve contends that the principles of section 598.21 should be used to decide whether a modification is justified just as these principles are used for related custody determinations. Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988).

We agree that Iowa Code section 598.21 applies. Section 598.21(8)(k) specifically provides that modifications under Chapter 675 must be approved by the court. "A modification order may be entered when there is a substantial change in circumstances." Iowa Code § 598.21(8). We consider the following factors:

a. Changes in the employment, earning capacity, income or resources of a party.

b. Receipt by a party of an inheritance, pension or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Other factors the court determines to be relevant in an individual case. . . .

Iowa Code § 598.21(8).

The power of the courts to modify child support exists only where there has been a material and substantial change in circumstances since the date of the original decree. In re Marriage of Mueller, 400 N.W.2d 86, 88 (Iowa App. 1986). The changes the trial court relied on were defendant's increase in salary, his overtime pay, and the fact that he is now married and his wife earns approximately $750 per month. While Steve's present wife has no obligation to support the parties' child, we may consider Steve's overall financial condition, including the fact that his present wife is employed, in fixing the amount of support Steve should pay. In re Marriage of Garvis, 411 N.W.2d 703, 707-08 (Iowa App. 1987).

In 1978, Steve's net income was $1,500 per month, while his expenses were $1,030 per month. In 1987, Steve's net family income was $2,750, while his expenses were $1,618. His income in 1986, including overtime, was over $52,000. As of October 1987 he had earned $36,000. The lower amount reflects a decrease in the amount of overtime pay. Steve and his wife support no children in their home. Steve's financial condition has substantially improved.

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Denise's financial position has also improved. At the time of the decree she was on A.D.C. and receiving approximately $385 per month plus food stamps. In 1987, Denise was netting $709 per month as a professional housekeeper. While her income has increased, so have expenses associated with being the custodial parent.

The trial court has reasonable discretion in modifying support decrees. We find no abuse of discretion in increasing Steve's support obligation to $400.

II. The visitation schedule set down by the trial court needs modification according to Steve. He contends that the parties were able to work out weekend visitations on their own, but needed a schedule for the holidays. However, the trial court established an alternate weekend visitation schedule beginning at 6:00 p.m. on Friday and ending at 4:00 p.m. on Sunday. The trial court also failed to include Christmas Eve on the holiday schedule.

Visitation is determined by the best interests of the child. In re Marriage of Hubbard, 315 N.W.2d 75, 82 (Iowa 1982). Ordinarily, it is in the child's best interests to have continued association with the noncustodial parent through visitation. Id. The schedule provided by the trial court protects the best interests of the child. However, we feel that Christmas Eve should also be included. We affirm the visitation schedule with the addition of the following: The party who does not have the

child on Christmas that year shall have the child from 4:00 p.m. to 10:00 p.m. on Christmas Eve.

III. Steve was ordered to pay $700 towards Denise's attorney fees and costs of the trial court action. Attorney fees for the prevailing party are authorized in Iowa Code section 675.25. Even though fees are discretionary, the trial court's order was proper.

On appeal, Steve has requested reimbursement for his fees. Attorney fees are recoverable in a modification. See In re Marriage of Mueller, 400 N.W.2d 86, 89 (Iowa App. 1986) (based on Iowa Code § 598.36). However, fees are not recoverable as a matter of right, but rest with the court's discretion. Id. We deny Steve's request for attorney fees on appeal.

In conclusion, the decision of the district court is affirmed as modified. Appellate costs are to be divided equally between the parties.

AFFIRMED AS MODIFIED.