IN THE COURT OF APPEALS OF IOWA

No. 0-758 / 00-0783
Filed April 27, 2001

IN RE THE MARRIAGE OF DEBORAH L. PARKER AND LELAND D. PARKER

Upon the Petition of
DEBORAH L. PARKER,
Petitioner-Appellee,

FILED
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CLERK SUPREME COURT

And Concerning
LELAND D. PARKER,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge.

The respondent appeals a district court ruling denying his petition to modify the child support provisions of the parties' dissolution decree. **AFFIRMED.**

John W. Hofmeyer III, Oelwein, for appellant.

David G. Thinnes of Thinnes & Liesveld, Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

The respondent appeals a district court ruling denying his petition to modify the child support provisions of the parties' dissolution decree. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

A decree of dissolution was entered on September 14, 1994. The decree ordered Leland Parker to pay Deborah child support in the amount of $636 per month. Sometime after entry of the decree, Leland was placed in a care facility due to his mental condition. The children began receiving monthly social security benefits as a result of Leland's disability. In June 1997, Leland filed a modification petition, seeking to lower his child support payments. On February 4, 1998, the date scheduled for trial, Leland's father, Howard Parker,[1] Leland's attorney, his former wife Deborah, and her attorney agreed Leland's support would be reduced to $400 per month. A stipulation was entered on the record and the court entered an order modifying the decree of dissolution. The parties knew prior to entering into the stipulation the children were receiving social security benefits. Howard Parker and Leland's attorney discussed the issue of whether Leland should receive a credit or offset for the benefits the children were receiving.

On September 9, 1999, Leland filed the modification action now before the court on appeal. He alleged he should receive a credit against his child support obligation for the social security benefits the children were receiving. The credit would result in a child support deviation of more than ten percent, thereby

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[1] Howard Parker was handling Leland's affairs at this time.

requiring modification pursuant to Iowa Code section 598.21(9). The district court denied his application to modify child support. Leland appeals.

Modification of Child Support. Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's fact findings, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Fox*, 559 N.W.2d 26, 28 (Iowa 1997).

After a careful review of the record, we agree with the district court's conclusions, and adopt them as our own:

> In essence, Leland and his family have returned to court because they are dissatisfied with the stipulation and settlement which was entered in February 1998. They are raising legal issues which were known at that time. While the case of *Potts v. Potts*, 240 N.W.2d 680 (Iowa 1976) provides that Social Security Disability payments to dependents may be credited against the parent's child support obligation, the Court's opinion indicates there could be some discretion exercised by the trial court. It is not a hard and fast rule that the disability payments to the children necessarily obviate Leland's duty to provide support over and above such payments. The court must always look at the "equities" of each case to determine how much of the credit should be allowed. *In re Marriage of O'Brien*, 565 N.W.2d 619, 622 (Iowa 1997). In doing so, the court considers the parties' net worth as well as the special needs of the children. *State ex rel Pfister v. Larson*, 569 N.W.2d 512, 515 (Iowa Ct. App. 1997).
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> Leland must prove that there has been a substantial change in circumstance occurring since the entry of the February 1998 modification. It is apparent that there has been virtually no change. *See In re Marriage of Lee*, 486 N.W.2d 302 (Iowa 1992).
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> We affirm the district court's denial of Leland's modification petition.

Attorney Fees. Deborah and Leland request attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997).

A successful party does not have a vested right to appellate attorney fees. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Wood*, 567 N.W.2d at 684; *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We order Leland to contribute $1000 toward Deborah's appellate attorney fees. We deny Leland's request for attorney fees.

AFFIRMED.