

IN THE COURT OF APPEALS OF IOWA

No. 4-347 / 93-1564

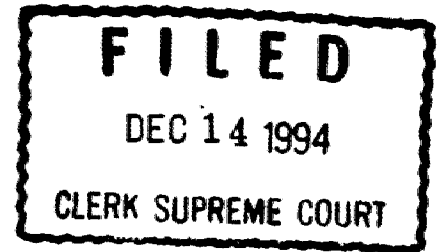
IN RE THE MARRIAGE OF RICHARD L. KROEGER AND
JONI L. KROEGER

Upon the Petition of
RICHARD L. KROEGER,

Appellant,

And Concerning
JONI L. KROEGER,

Appellee.



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Appeal from the Iowa District Court for Pottawattamie
County, Keith E. Burgett, Judge.

Richard appeals from an order dismissing his
application to modify the parties' dissolution decree.
REVERSED.

James L. Spellman, Des Moines, for appellant.

Jeanne K. Johnson, Des Moines, for appellee.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

Richard Kroeger appeals from the district court order dismissing his application to modify the parties' dissolution decree. He contends the court erred in failing to order Joni Kroeger to pay support for their adult child, Martin Kroeger, who is currently a full-time college student. On our review, we reverse the district court's order.

Richard and Joni had one child, Martin, born December 9, 1974. They were divorced on March 30, 1989, and Joni was awarded primary physical custody of Martin.

The parties' dissolution decree was modified on May 17, 1990, December 20, 1990, and April 16, 1992. The April 16 modification again placed Martin's custody with Joni and ordered Richard to pay child support of \$325 per month until Martin reached the age of majority became self-supporting, or married. However, the child support obligation was to continue, if Martin was between the ages of eighteen and twenty-two and a full-time student in a college, university, or area school.

On May 5, 1993, Richard filed the present application to modify the dissolution decree, alleging that Martin is now eighteen years of age, is still being supported by the parties, and desires to live with his father. In his prayer for relief, Richard asked that Joni be ordered to pay child support. At the hearing on the application, Richard testified that Martin was now living with him and

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attending Grand View College. The parties presented evidence (although incomplete) about their respective incomes, college tuition at Grand View, the University of Iowa and Iowa State University, Martin's income from grants and scholarships, and his interest in savings bonds. The district court orally indicated its intention to consider school expenses, the bonds, the parents' income, and Martin's income from other sources in its decision.

On August 26, 1993, the district court entered an order dismissing Richard's application to modify the dissolution decree. The court held child custody was the only issue Richard pled and it had resolved itself by the passage of time.

Richard now appeals. He argues, and Joni concedes, that the issue of child support was tried by acquiescence. Richard contends the district court erred in failing to order Joni to pay support while Martin attends school. Joni responds that the matter should be remanded to the district court because the record is inadequate to determine an appropriate award of support.

I.

In this equity action, our review is de novo. Iowa R. App. 4. 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 the credibility of

witnesses, but are not bound by them. Iowa R. App. p. 14(f)(7); In re Marriage of Keller, 478 N.W.2d 424, 425 (Iowa App. 1991).

II.

The issues this court must resolve are whether the question of Martin's educational support was before the district court and whether this issue should be remanded to the district court for taking additional evidence of the parties' net worth and Martin's self-sufficiency.

Richard argues, and Joni concedes that the issue of educational support was tried by acquiescence of the parties. We agree with the parties. Much of the testimony in the record deals with the issue of Martin's college expenses and Joni's responsibility and ability to help meet them. Thus, we conclude the issue of educational support was before the the district court.

III.

Next we must consider the parties' respective educational support obligations. See Sandler v. Sandler, 165 N.W.2d 799, 802 (Iowa 1969) (holding the duty to provide educational support extends to both parents). Support is defined by Iowa Code section 598.1 (1993). It provides that child support "obligations may include support for a child who is between the ages of eighteen and twenty-two years, who is . . . in good faith a full time student in a college" The language of the statute is permissive, not mandatory. To continue support past the

age of majority requires a provision in the decree. In re Marriage of Linberg, 462 N.W.2d 698, 701 (Iowa App. 1990).

In this case, the April 1992 modification of the dissolution decree required Richard to pay child support of \$325 per month and specifically continued the obligation if Martin was a full-time college student. Richard contends, however, that Martin's change of residence from Joni's home to his constitutes a substantial change in circumstances requiring a modification of the decree. Based on the record, we agree that a substantial change in circumstances has occurred. Since the last modification of the decree, Martin has changed his residence and has begun college. See Keller, 478 N.W.2d at 425 (holding eighteen-year-old high school student's change of residence constituted a substantial change in circumstances); In re Marriage of Pieper, 369 N.W.2d 439, 441-41 (Iowa 1985) (holding in a modification proceeding the court can require educational support after the child has achieved majority).

While Iowa Code section 598.1(2) imposes an obligation on divorced parents to support their adult offspring while they are attending college, the statute does not require support in all cases. In re Marriage of Lieberman, 426 N.W.2d 683, 684 (Iowa App. 1988) Rather, it allows the trial court discretion to award support of the child through college under the proper circumstances. Linberg, 462 N.W.2d at 701; In re Marriage of Vrban, 293 N.W.2d 198,

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203 (Iowa 1980). Factors the court must take into consideration are the ability of the child for college work, the age of the child, the financial condition of the parents, and whether the child is self-sustaining. Linberg, 462 N.W.2d at 702. The child support guidelines are not applicable to determine support of an unmarried adult child under twenty-two years of age who is a student. Id.

There is no argument over Martin's ability for college work. The questions center on Martin's need and his parent's financial resources. Joni contends the record relating to the parties' financial resources is inadequate to make these determinations. We do not agree and find the record contains sufficient information to determine the parties' respective support obligations.

Both Richard and Joni are employed by U.S. West. Richard's gross annual income is approximately \$40,000 and Joni's is approximately \$37,000. Joni also supports a two-and-a-half year old child. Additionally, Martin and Richard co-own savings bonds with a face value of approximately \$13,000. The evidence was unclear regarding which of these bonds were gifts from Richard's parents and which Richard had purchased. There was also no information in the record indicating the actual current value of the bonds and whether they were intended for Martin's education.

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Martin is attending Grand View College in Des Moines. His annual college expenses are approximately \$10,000, room and board are estimated at \$3,200, and he receives approximately \$2,500 in grants and scholarships. Richard currently provides Martin's room and board and stated he intends to assist Martin with tuition and other education expenses.

Joni contends the court should limit Martin's expenses to the cost of attending a state-supported school in making a support determination. We have previously stated, "[w]hen parents [have] limited financial means there is no reason to obligate them for college expenses beyond those of attending a state supported school in the state of the students residence." Lieberman, 426 N.W.2d at 686. Thus, in this case, it is appropriate to consider, the tuition and room and board information from the University of Iowa and Iowa State submitted by Joni. At these universities, tuition and fees are approximately \$2,228 and room and board are approximately \$3,100.

There is no question that a college education is desirable. However, we must carefully balance the needs of the children with the financial assets of the parents. In re Marriage of Byall, 353 N.W.2d 103, 109 (Iowa App. 1984). The cost of education must not exceed an amount the parties are able to pay. Id. Considering the costs of attending a public university and Joni's means we believe a contribution of \$260 per month is reasonable. We further

find Richard's provision of room and board to Martin is a appropriate contribution on his part.

The decree is modified as follows. Richard's child support payments of \$325 per month shall cease. Joni shall pay \$260 per month to Richard for Martin's education through the clerk of court until Martin completes college or becomes twenty-two years old. Richard shall provide Martin with room and board until he completes college or becomes twenty-two years old. The costs of this appeal are taxed to both parties.

REVERSED.