

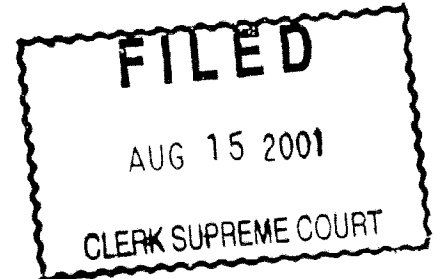
IN THE COURT OF APPEALS OF IOWA

No. 1-384 / 00-1700
Filed August 15, 2001

IN RE THE MARRIAGE OF JENNY LEE DANNEN
AND DOUGLAS EDWARD DANNEN

Upon the Petition of
JENNY LEE DANNEN,
Petitioner-Appellant/Cross-Appellee,

And Concerning
DOUGLAS EDWARD DANNEN,
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Hardin County, Carl D. Baker,
Judge.

Petitioner appeals and respondent cross-appeals from the order dissolving
their marriage. **AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON
CROSS-APPEAL.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellant.
Joel T. Greer of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

MILLER, J.

Petitioner Jenny Lee Dannen appeals and respondent Douglas Edward Dannen cross-appeals from the district court order dissolving their marriage. Jenny contends the trial court incorrectly set the amount of child support payments she is to receive from Douglas. Douglas contends the trial court improperly assessed against him one-half the balance of the loan for the down payment of the parties' acreage. Douglas seeks an award of costs and appellate attorney fees. We affirm as modified on the appeal and affirm on the cross-appeal.

I. BACKGROUND FACTS

Jenny and Douglas were married January 9, 1982. At the time of trial Jenny was thirty-seven years old and Douglas was forty-one. The parties are the parents of three children: Cody, born October 6, 1984; Blaine, born August 21, 1989; and Heath, born March 13, 1995. Jenny had received her lab technician's degree from Des Moines Area Community College and was in good physical and mental health. Douglas had attended a technical school but never received a degree. He testified he had been diagnosed with bi-polar disorder, a condition for which he takes medication.

The parties had both been employed at International Boar Semen, where Jenny is still employed as a production manager at a salary of approximately \$25,000 per year. When Douglas worked there he earned somewhat less than Jenny did. The parties separated in February 1999 and Jenny received a no contact order against Douglas because of her fear about his mental status. The no contact order prohibited Douglas from contacting Jenny at her place of work

and consequently he was forced to quit working at International Boar Semen.¹ He subsequently obtained employment at American Packaging Co. He earns approximately \$21,320 per year. The trial court found Jenny's income to be \$25,008 per year and Douglas' income to be \$21,319.54 per year.

Douglas moved out of the family home after the no contact order, taking only his clothes and a few pillows. Jenny and the three boys remained in the family home on the parties' acreage. Jenny filed her petition for dissolution of marriage in January 2000. In May 2000 the court ordered Douglas to pay temporary child support of \$489 per month. At the time of trial Douglas was current on his child support payments.

The parties are buying their acreage from Janice and Stanley Granner on a contract which is to be paid off in June of 2006. Steve and Becky Kerns, the owners of International Boar Semen, loaned Jenny and Douglas \$10,000 for the down payment on their acreage. The balance left on that loan at the time of trial was \$6,000. A monthly amount of \$175 is paid to Steve and Becky Kerns to cover the note for this down payment loan. It is unclear from the record whether Jenny currently pays this full amount herself or if Douglas helps with the payments. Becky testified that she paid the \$175 per month to the Kerns. However, she later testified she and Douglas had each taken on responsibility for one-half the contract payments and the down payment loan payments and Douglas later testified he had made payments towards both debts. Jenny did testify that if she were allowed to remain on the acreage she would be responsible for the monthly payments to the Kerns.

¹ It is unclear from the record whether Douglas was fired from or quit his job at International Boar Semen.

Prior to trial the parties were ordered to file with the court pretrial compliance statements and financial statements. Douglas' pretrial statement requested child support be set at \$475 per month and his child support guidelines worksheet calculated his monthly child support obligation to be \$452.50. Jenny's pretrial statement requested monthly child support be set at \$486.75. Her guidelines worksheet calculated the "Guideline monthly amount of support" to be \$517.25 but for some unexplained reason later listed the "Requested amount of child support" as \$486.75.

The dissolution was tried to the court on September 7, 2000 and the court filed a ruling and the dissolution decree on September 14, 2000. The court ordered Douglas to pay Jenny child support in the amount of \$487 per month, with Jenny receiving Cody and Heath as dependent exemptions and Douglas receiving Blaine as a dependent exemption. The court also ordered that Jenny and the boys could remain on the parties' acreage in the family home, with Jenny to make the contract payments and to pay for insurance and real estate taxes, until the year 2006 when the contract payments were to be completed. It ordered that the acreage then be sold, and that after payment of the contract and sales expenses Becky Kerns be paid \$6000 for the down payment loan and the remaining proceeds be divided equally between the parties.

Jenny filed a motion pursuant to Iowa Rule of Civil Procedure 179(b) to enlarge, amend or modify the decree requesting that the court, among other things, amend the monthly amount of child support from \$487 to \$517. She alleged \$517 was the correct amount according to the child support guidelines based on the parties' income figures established at trial. Douglas filed a

resistance to Jenny's motion to enlarge as well as a cross-motion to enlarge. He asked the decree be "clarified to state that Jenny will be responsible for the Becky Kerns debt, and that when the acreage is listed in 2006 and then sold, the proceeds will be split equally between the parties without any payment to Becky Kerns."

The court denied both Jenny's request to modify the monthly support payments and Douglas' modification/clarification request regarding the Kerns debt. The court stated in regard to Douglas' request,

The respondent's requested modification is denied. The amount owed to Becky Kerns has been fixed at the time of the filing of the decree in the amount of \$6,000. Each party shall be responsible for one-half (1/2) of this debt. If the debt has been paid off by petitioner at the time the real estate is sold in 2006, then each party shall be made responsible for \$3,000 of this debt and the sale proceeds of the house will be divided accordingly.

II. SCOPE AND STANDARDS OF REVIEW

In this equity case our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). 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). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

III. MERITS

Jenny appeals contending the trial court erred in its failure to determine child support consistent with the child support guidelines and based on those guidelines the court should have awarded her \$517 per month. Douglas cross-

appeals arguing the court improperly assessed him one-half the amount remaining on the down payment loan from the Kerns. Douglas also requests Jenny pay costs and his attorney fees for this appeal.

A. Child Support Payments

Jenny argues on appeal, based on the trial court's determination of the parties' net incomes as established at trial, that the correct calculation of monthly child support under the child support guidelines is \$517. She contends the trial court erred in failing to follow the guidelines and order this amount. Jenny argues the court's award is contrary to Iowa Code section 598.21(4)(a) (1999) because the court made no written findings justifying its departure from the guidelines as required by this code provision.

As set forth above, in the child support guidelines worksheet Jenny submitted to the court the "Guideline monthly amount of support" was \$517. The trial court expressly noted Jenny's calculation of \$517 in its findings of fact and it appears from the evidence in the record \$517 is the correct amount of support based on the guidelines. In its conclusions of law the trial court also correctly noted that the "proposed" amount of support "requested" by Jenny in her child support guidelines worksheet varied from the guideline amount submitted by her, stating:

Jenny has proposed that the amount of child support paid by Douglas should be fixed in the amount of \$487 per month. Douglas has proposed child support in the amount of \$475 per month. These figures do not comport with the child support figures submitted by each party on their child support guideline worksheet calculations.

"Our child support guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result." *In re Marriage of*

Swan, 526 N.W.2d 320, 325 (Iowa 1995) (quoting *State ex rel. Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994)). There is a rebuttable presumption the amount of child support determined according to our guidelines is the correct amount of child support to be awarded. *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992).

That amount may be adjusted upward or downward if the court finds an adjustment necessary to provide for the needs of the children and do justice between the parties under the special circumstances of the case. To justify a departure from the guidelines, the court must make written findings that the scheduled amount would be "unjust or inappropriate" under the criteria established by [the supreme court].

Reaves, 514 N.W.2d at 104 (internal citation omitted) (citing Iowa Code § 598.21(4)(a)).

Jenny caused confusion by initially listing an amount in her pretrial statement and in her guidelines worksheet that was different than the guideline amount calculated and shown on her guideline worksheet. However, she had testified that her guidelines worksheet reflected what Douglas' child support for the three boys would be. Further, the inconsistency between the correctly calculated amount and the other figure was brought to the attention of the trial court in Jenny's 179(b) motion in which she pointed out that the proper amount of support based on the child support guidelines was \$517 per month.

We find the trial court should have granted Jenny's 179(b) motion to modify the decree in order to bring the ordered amount of child support into compliance with the child support guidelines and Iowa Code section 598.21(4)(a). Section 598.21(4)(a) states there is a rebuttable presumption that the amount of support which would result from the application of the guidelines is

the correct amount and we find no reason to vary from the scheduled amount. See *Brown*, 487 N.W.2d at 334. Therefore, we modify the decree to require Douglas to pay child support of \$517 per month, the proper amount based on the application of the child support guidelines.

B. Down Payment Loan

Douglas states the issue raised by his cross-appeal is whether the district court properly assessed against him one-half the outstanding balance of the loan from the Kerns for the down payment on the acreage, when it awarded Jenny the use of the acreage until 2006. He states the matter is perhaps not an issue so much as it is a request for interpretation of the trial court's ruling on the post-trial motions, and that he assumes the decree should be interpreted to mean Jenny is the one responsible for making the \$175 per month payments to Becky Kerns and he is not expected to make them. He requests that if we determine the trial court meant to make him responsible to make periodic payments, then we modify the decree so that only Jenny is responsible for making them.

In its ruling and decree the trial court stated the parties' had reached agreement on many issues, but disagreed concerning the disposition of an acreage, and asked the court to address the issue of visitation. This suggests that with the exception of disposition of the acreage and debts owed on it all property issues had been settled by agreement and the trial court did not need to consider other aspects of the property division in determining appropriate disposition of the acreage and related debt. Review of the parties' respective written pretrial statements supports this view, for each party suggested that the \$6000 owed to Becky Kerns be paid from sale proceeds when the acreage was

sold. The trial court's decree accordingly so provided, and further provided that after payment of the contract balance, sales expenses, and payment to Becky Kerns, the balance of the proceeds would be divided equally between the parties. It thus appears the trial court intended that Jenny, who would have the benefit of residing in the home on the acreage, make the periodic contract payments in return for that benefit, and that each party would ultimately receive one-half of the equity in the acreage at the time of the dissolution together with any additional equity generated by Jenny's contract payments between the dissolution and date of sale and any post-dissolution appreciation in value of the acreage.

Trial testimony had showed that the parties were obligated to pay \$175 per month on the down payment loan. Douglas' post-trial motion noted that the Kerns expected periodic payments which, if continued, would result in the down payment loan being paid off before 2006. He stated he assumed Jenny was willing to make the periodic payments to the Kerns, as she had testified she would if the court allowed her and the children to occupy the premises until 2008, and the debt to the Kerns would be paid off before the acreage was sold. He asked that the decree be clarified to state Jenny would be responsible for the Kerns debt and when the acreage was sold the proceeds would be divided equally between the parties without any payment to Becky Kerns.

The trial court's ruling on Douglas' post-trial motion clearly rejected his request that Jenny alone be responsible for the outstanding debt to Becky Kerns and confirmed that he would be responsible for one-half of it. The court went on to state, "If the debt has been paid off by petitioner at the time the real estate is sold in 2006, then each party shall be made responsible for \$3,000 of this debt

and the sale proceeds of the house will be divided accordingly.” This language appears to assume that Jenny will, consistent with her testimony, make the monthly payments on the down payment loan as they become due. It provides that if she does so and has thus paid off that debt at the time the acreage is sold, each party shall nevertheless be responsible for \$3000 of what was a \$6000 balance at the time of trial.

We construe the trial court’s decree and ruling on Douglas’ post-trial motion as together making Jenny responsible to make the \$175 per month payments, but making each party ultimately responsible for one-half of the \$6000 down payment debt. If Jenny pays off the entire \$6000 before the acreage is sold, this could be accomplished by setting off the first \$6000 of the parties’ equity to her and dividing the remaining equity equally between the parties. We find this result to be fully equitable and consistent with the trial court’s apparent goal of making Jenny responsible for contract payments in return for use of the acreage in which Douglas has equity while in all other respects dividing the parties’ equity equally between them. We affirm the trial court’s decision concerning possession of the acreage, responsibility for monthly payments on the down payment loan, and division of proceeds upon sale.

C. Douglas’ Request for Costs and Attorney Fees

Douglas asks for costs and attorney fees on this appeal. We have discretion to award appellate attorney fees under Iowa Code section 598.36. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). 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 trial court’s decision on

appeal. *Id.* After considering the relevant factors, we conclude each party should be responsible for their own appellate attorney fees.

IV. CONCLUSION

Based on our de novo review of the record we conclude the trial court should have granted Jenny's 179(b) motion and modified the amount of monthly child support owed by Douglas to \$517 in order to bring it into compliance with the child support guidelines and Iowa Code section 598.21(4)(a). We modify the decree accordingly. We further conclude the remainder of the Kerns' loan should be paid in monthly installments of \$175 by Jenny as she agreed at trial and as apparently intended by the trial court. If she has paid the debt to the Kerns in full when the real estate is sold, Douglas shall owe her \$3000 at that time. We deny Douglas' request for appellate attorney fees. Costs on appeal are taxed to Douglas.

AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.