IN THE COURT OF APPEALS OF IOWA

No. 6-541 / 95-2105

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IN RE THE MARRIAGE OF CHRIS D. WEATHERSPOON AND CHRISTINE WEATHERSPOON

Upon the Petition of
CHRIS D. WEATHERSPOON,

Appellant,

And Concerning
CHRISTINE WEATHERSPOON,

Appellee.

FILED
SEP 24 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Chris Weatherspoon appeals a district court order modifying the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Steven A. Berger of Wehr, Berger, Lane & Stevens, Davenport, for appellant.

Donan B. McAuley, Rock Island, Illinois, and Michael W. Liebbe, Davenport, for appellee.

Considered by Cady, P.J., Huitink, J., and Peterson, S.J.*

*Senior judge from the First Judicial District serving on this court by order of the Iowa Supreme Court.

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PETERSON, S.J.

Chris D. Weatherspoon (Chris) appeals a district court order modifying the parties' dissolution decree. He contends the trial court abused its discretion in ordering a resumption of alimony payments to his former wife, Christine Weatherspoon (Christine), for an indefinite period and erred in computing the parties' net income for purposes of applying uniform child support guidelines. Christine seeks both trial and appellate attorney fees.

*I. **Background and Proceedings.*** Chris D. Weatherspoon and Christine Weatherspoon were married on September 16, 1972. Two children were born to this marriage: Kenya, born on April 14, 1976; and Ebony born on August 27, 1980. Their marriage was dissolved by a decree entered April 23, 1991. At that time, Chris was employed at the Monsanto Company, and Christine was a student and also employed at the Rock Island Arsenal in a position only for students. The decree awarded the parties joint custody of the two children, and the physical placement with Christine.

Christine wanted to continue her education and receive a degree in accounting. She believed it would take an additional three years to accomplish this. The trial court found Christine had made a material financial contribution to Chris's ability to secure a degree in engineering and that she had worked throughout the marriage, and had contributed substantially to Chris's ability to reach the professional position he now enjoyed. The trial court determined she should be able to continue her education so that she could contribute more adequately to her own support and the support of

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the children. Consequently, she was awarded alimony in the sum of $200 per month for a period of three years.

On January 13, 1994, an order was entered in response to Chris's application for rule to show cause concerning visitation and Christine's application for modification of the decree and for contempt. At that time, Chris's child support was increased to $992.24 per month.

On February 21, 1995, Chris filed an application to modify the decree. In addition to raising visitation questions, he requested his child support obligations for Ebony be set and that due to the impending graduation of Kenya from high school the parties' obligations regarding her college expenses be established. Christine filed a cross-application requesting her spousal support be continued and increased.

On August 29, 1995, an order was entered setting Chris's child support obligation for Ebony in the sum of $681 per month and established his obligation for Kenya's college expenses in the sum of $260 per month. Christine was awarded alimony in the sum of $350 per month, all of these obligations to commence on September 1, 1995. The order was silent as to the duration of the alimony.

Additional facts will be set out in the following divisions.

II. Scope of Review. We review the district court's modification of a dissolution decree de novo. *In re Marriage of Jacobo*, 526 N.W.2d 859, 864 (Iowa 1995); Iowa R. App. P. 4. We give weight to the district court's finding of fact, but they do not bind us. *In re Marriage of Sjulin*, 431 N.W.2d 773, 776 (Iowa 1988).

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III. ***Alimony.*** Chris contends the trial court erred in ordering a resumption of alimony payments to Christine for a indefinite duration. In extraordinary circumstances, a court has the power, under section 598.21(8), to modify a dissolution decree to reinstate alimony payments after the payee's spouse has met his or her obligations under the decree even though the period for alimony payments has expired. *In re Marriage of Wessels*, 542 N.W.2d 486, 489 (Iowa 1995); *In re Marriage of Marshall*, 394 N.W.2d 392, 397 (Iowa 1986).

In the original decree, the trial court awarded rehabilitative alimony. *See In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). This award was supported by a finding that Christine had made material financial contributions to the petitioner's ability to secure an engineering degree and that she contributed substantially to the petitioner's ability to reach the professional position he now enjoys. The trial court found Christine wished to continue with her own education to secure an accounting degree which will take an additional three years. The court further found this will enable her to earn a decent living for herself and contribute more for the care of the children.

Christine secured her accounting degree in May of 1995. Because her job at the Rock Island Arsenal was available only to students, she was laid off and she has been unable to find employment in her discipline since that date.

We believe it was contemplated by the trial court that awarded the initial alimony that Christine would become employed upon receipt of her degree. We

believe that extraordinary circumstances have been shown to justify the reinstatement of the alimony; however, we believe that it should be for a definite period of time We believe an appropriate period of time for the additional alimony would be two years or until Christine secures full-time employment, whichever event shall first occur

IV. Child Support. Chris contends the trial court erred in computing the parties' net incomes for purposes of applying the child support guidelines. He contends the trial court should have reduced his net monthly income by the sum of $260, which is Kenya's college-related expenses, and the alimony award to Christine of $350 per month.

The child support guidelines do not specifically provide for a deduction for alimony or court-ordered college expenses, but they do provide for an adjustment if necessary for the needs of the child and to do justice between the parties under the special circumstances of the case. *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991); *In re Marriage of McKamey*, 522 N.W.2d 95, 99 (Iowa App. 1994).

In this situation, the alimony is of a limited duration as is the required college expense for Kenya. We do not believe this is a situation where these items should be deducted from Chris's gross monthly income for child support purposes.

We find Chris's gross yearly income is $60,584 and, after the allowed deductions, his net annual income is $39,488, or $3290 per month.

In determining Christine's net monthly income, it is appropriate to consider her earning capacity. *In re Marriage of Drury*, 475 N.W.2d 668, 672 (Iowa App. 1991); *In re Marriage of Byall*, 353 N.W.2d 103, 107 (Iowa App.1984). Earning capacity is one of the statutory "other factors" to be considered. *Byall*, 353 N.W.2d at 107-08; *see* Iowa Code § 598.21(4)(I) (1995). When, as in this case, a party has been unemployed for a time, we can impute to that party the capacity to earn at least the minimum wage. *See In re Marriage of Fogle*, 497 N.W.2d 487, 489 (Iowa App 1993). In determining the net monthly income at minimum wage, the twenty percent rule of thumb has been used with general accuracy. *State ex rel. Shoars v. Kelleher*, 539 N.W.2d 189, 190 (Iowa 1995); *see* Iowa Code § 252B.7A(1)(e) (1995). We find Christine's net monthly income to be $714, based on the current minimum wage of $5.15 per hour, less twenty percent for allowable deductions. Consequently, we find Chris's child support obligation for Ebony to be 20.5% of his net monthly income, or $674 per month.

V. ***Attorney Fees.*** Christine requests appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We consider the needs of the party making the request and the ability of the other party to pay and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Miller*, 524 N.W.2d

442, 445 (Iowa App. 1994). We award Christine the sum of $500 as appellate attorney fees.

In conclusion, we affirm the trial court's award of alimony in the sum of $350 per month, but limit it to a period of two years or until Christine becomes employed on a full-time basis, whichever event shall first occur. We further find the child support Chris is to pay for Ebony to be $655 per month and award Christine $500 for appellate attorney fees.

AFFIRMED AS MODIFIED.