FILED
SEP 25 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN RE THE MARRIAGE OF PAMELA A. MANNING AND JOHN O. MANNING

Upon the Petition of)

PAMELA A. MANNING,)

Petitioner-Appellee,) Filed September 25, 1986

And Concerning)

JOHN O. MANNING,) 6-241 / 85-1330

Respondent-Appellant.)

Appeal from the Iowa District Court for Van Buren County (No. 22162) - D. B. Hendrickson, Judge.

Respondent husband appeals from an order modifying the parties' original dissolution decree. **AFFIRMED AS MODIFIED.**

James W. McGrath of McGrath & McGrath, P.C., Keosauqua, for respondent-appellant.

Craig R. Foss of Foss, Kuiken & Gookin, P.C., Fairfield, for petitioner-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Respondent husband appeals from an order modifying the parties' original dissolution decree. Respondent contends the trial court erred in ordering petitioner wife to pay child support of only $20.00 per child per week. Respondent contends the trial court's findings inaccurately reflect petitioner's financial resources and that the trial court's order is unreasonable, unjust, and inequitable under Iowa Code section 598.21(4) (1985). Petitioner requests that respondent be ordered to pay petitioner's attorney fees and costs on appeal. We affirm as modified.

The marriage of petitioner, Pamela Manning, and respondent, John Manning, was dissolved in 1978. Under the terms of the decree, custody of the parties' two daughters was given to Pamela, and John was ordered to pay child support of $150.00 per month per child. In 1982, the dissolution decree was modified, with John's child support obligations increasing to $200.00 per month per child. In 1984, the decree was again modified, with physical custody of the children transferred from Pamela to John. This modification was silent, however, as to Pamela's obligation to make child support payments to John after he became the custodial parent.

On December 13, 1984, John applied for a modification, requesting that Pamela be ordered to contribute to the support of the children. A hearing was held on March 8, 1985. At the time of the hearing the children were 10 and 13 years of age.

John has been employed for the past twelve and one-half years at the Farmers State Bank in Keosauqua, where he is now vice-president. His income for the 1984 taxable year was $37,633.00. John's present wife is employed as an X-ray technician and earned $19,031.00 in 1984. The adjusted gross income

for both John and his present wife in 1984 was $55,747.00. In January 1985, they showed a positive net worth of over $40,000.00.

Pamela is currently employed as an elementary school teacher in suburban Dallas, Texas. Her salary for the 1985-86 school year has been estimated at $27,427.00. Pamela currently shows a negative net worth of $375.00. Pamela is currently living with a man whose gross income she estimates to be approximately $60,000.00 per year.

The 1985 affidavits of both parties showed monthly expenses exceeding their monthly incomes. In its August 23, 1985, ruling the trial court ordered petitioner to pay child support of $20.00 per child per week, for a total of $173.00 per month, until each child attains her majority, marries, becomes self-supporting, or dies, whichever occurs first, and up to age 22 if the conditions set forth in Iowa Code section 598.1(2) exist. The trial court also required petitioner to pay one-half of all medical and dental expenses not covered by insurance and awarded John the dependency exemptions for both children for income tax purposes.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). There are no hard and fast rules governing the award of child support, and precedent is of little value as our decision must ultimately be based upon the particular facts of each case. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

We have long recognized the principle that both parents are under a legal duty to contribute to the support of their children. In re Marriage of Hook, 364 N.W.2d 185, 189 (Iowa 1985); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). This obligation, however, is not necessarily to be borne equally by them, rather, it should be apportioned according to the fair ability of each

to contribute. Fleener, 247 N.W.2d at 221. In considering John's claim that the trial court's decision requiring Pamela to pay $20.00 per week per child is unreasonable, we must examine the facts of this case in light of those factors listed in Iowa Code section 598.21(4). Upon doing so, we are convinced that the child support obligation imposed by the trial court should be increased.

Iowa Code section 598.21(4) provides:

> Upon every judgment of annulment, dissolution or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for support of a child. Consideration shall be given to the child's need for close contact with both parents and recognition of joint parental responsibility for the welfare of a minor child. In any order requiring payments for the support of a minor child the court shall consider the following:
>
> (a) The financial resources of the child.
>
> (b) The financial resources of both parents.
>
> (c) The standard of living the child would have enjoyed had there not been an annulment, dissolution or separate maintenance.
>
> (d) The desirability that the party awarded either sole custody or, in the case of joint custody, physical care remain in the home as a full-time parent.
>
> (e) The cost of day care if the party awarded sole custody or, in the case of joint custody, physical care works outside the home, or the value of the child care services performed by the party if the party remains in the home.
>
> (f) The physical and emotional health needs of the child.
>
> (g) The child's educational needs.
>
> (h) The tax consequences to each party.
>
> (i) Other factors the court may determine to be relevant in an individual case.

In addition to these requirements, we may also consider the parties' age, present earning capacity, future prospects, duration of the marriage, the indebtedness

of each or both, and any other relevant factors. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa Ct. App. 1984).

In the present case, the trial court determined that the most significant factor was the financial resources of both parents. The record reveals that John and his present wife have a net monthly income of approximately $3,000.00. While John's present wife has no obligation to support John and Pamela's children, we may properly consider her contributions in determining John's overall financial condition. Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974). John pays $675.00 per month in rent and utilities, $400.00 per month on food for a family of five, $150.00 per month on clothing, and $605 per month in installment payments on various debts owed. John is the owner of a pension plan with a present value of $47,000.00, as well as an IRA account of $8,000.00. John and his present wife and family live in a mobile home.

Pamela's net monthly income is $1,640.37 per month. Pamela claims monthly expenses of $1,806.08 per month, plus $173.00 per month in child support obligations. Pamela pays $654.00 in rent and utilities, and $125.00 per month on clothing. Pamela spends approximately $255.00 per month on food, but testified at trial that she buys all the groceries for the man with whom she lives, Larry McMahon, but is not reimbursed for any food expenses. Pamela is the owner of a retirement plan of approximately $5,000.00. Pamela also drives a six-year-old automobile on which there is a $4,400.00 debt, and has a Mastercard debt of $3,600.00. Pamela also testified that she owed Mr. McMahon approximately $2,375.00. Pamela is currently living in a $170,000 home owned by Mr. McMahon, who earns approximately $60,000 per year.

Though we are mindful of the financial difficulties an increase in child support would impose upon Pamela, we believe that her child support obligations should be increased to $30 per child per week. We realize that Pamela will

have to make some sacrifices in order to meet the obligations imposed, but such sacrifices should be borne by the parents, not the children. Pamela's health appears to be good and her future earning potential is not dim. We additionally note that in 1982, before custody of the parties' children was transferred to John, John was ordered by the trial court to pay $400.00 per month in child support on a salary of slightly over $29,000.00. We therefore do not believe that an increase in Pamela's child support obligations would be unreasonable in light of the fact that as the children grow older, the costs of providing the children with adequate education, clothing, and food will increase, and that Pamela has already expressed her intent to contribute towards higher education.

Pamela requests reasonable attorney fees in the sum of $1,100 and that the costs of her defense in this appeal be assessed against John. In evaluating such a request, 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. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). See Iowa Code § 598.36 (1985). We hold that in the present case the parties shall be responsible for their respective attorney fees. Costs are assessed to Pamela.

AFFIRMED AS MODIFIED.