

FILED

SEP 24 1985

19
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARGARET G. BALLINGER AND ROY
H. BALLINGER

UPON THE PETITION OF
MARGARET G. BALLINGER,

)

Filed

)

September 24, 1985

Petitioner-Appellee,

)

5-401

AND CONCERNING
ROY H. BALLINGER,

)

84-1973

Respondent-Appellant.

)

Appeal from the Iowa District Court for Scott County, L. D. Carstensen,
Judge

Respondent-husband appeals from the decree dissolving the parties'
marriage, asserting that his child support obligation is excessive. **AFFIRMED
AS MODIFIED.**

H. Reed Doughty of Winstein, Kavensky, Wallace & Doughty, Rock Island,
Illinois, for respondent-appellant.

Seymore M. Raben, Davenport, for petitioner-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

OXBERGER, C.J.

Appeal by the respondent in this dissolution action is from the child support provisions of the decree. The respondent, Roy Ballinger, claims the child support award is excessive, that the court did not taken into consideration the tax consequences of the award, and did not recognize the mother's responsibility to contribute to the children's needs.

The parties have two children, Nicholas, born March 20, 1978, and Meghan, born May 30, 1981. Roy has a bachelor's degree in physical education and is employed as a transportation specialist with the U.S. Army Material Development and Readiness Command at the Rock Island Arsenal and as a helicopter pilot in the Iowa National Guard. His gross earnings are \$40,000, and he receives \$30,000 net pay. He is thirty-seven years old and has been employed by the Rock Island Arsenal for over nine years and has been in the National Guard for nearly fifteen years.

Margaret is thirty-six years old, has completed nearly three years of college and is employed as a management information assistant at the Rock Island Arsenal. Her gross income is \$16,390, and her net pay is \$13,000.

The court divided the parties' household goods, furniture, automobiles, and rental property, resulting in a nearly equal property division. Margaret will reside in the couple's marital home until the child support obligation by Roy ends. Child support was awarded of \$225 per week for two children and \$175 per week for one child, to end when each child reaches majority, or age twenty-two if the guidelines of extended child support set out at section 598.1(2) are met. Margaret was also given a \$6000 judgment against Roy, payable on demand.

We modify the child support provision of the decree. While the award for both children is about thirty percent of Roy's gross take-home pay, it is

nearly forty percent of his net income. We find it would be equitable, considering each parties' resources and the factors set out at section 598.21(4) of the Code, to modify the child support award from \$225 per week for both children to \$185 per week for both children and from \$175 to \$150 for one child.

We do not agree the court did not consider the tax provisions of consequences of the award. The court specifically found that Roy shall be able to claim the children as dependents. Roy indicates he would rather pay the monthly mortgage payment for the marital residence so he could deduct the interest, and reduce the child support payment by the mortgage payments made. Under his proposal he would not make these payments if Margaret cohabitated with an adult male or remarried. The purpose of child support, however, is to support the child and not the spouse and should not necessarily end because the mother remarries. We affirm the child support award in all other respects.

Margaret also requests an award of attorneys fees incurred on appeal. We will look at the results on appeal, and the need of the requesting party, along with the ability of the other party to pay in considering such a request. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Considering that Roy has been successful in part on appeal, and balancing this with the fact he earns more than twice Margaret's salary, we hold he shall contribute \$500 to Margaret's fees and costs shall be taxed equally.

AFFIRMED AS MODIFIED.