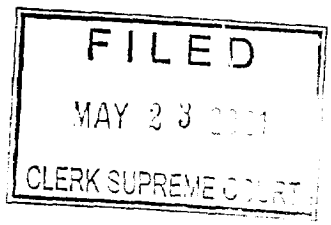
IN THE COURT OF APPEALS OF IOWA

No. 0-823 / 00-589
Filed May 23, 2001

IN RE THE MARRIAGE OF ALMA ANDERSON AND GEORGE J. ROBINSON

Upon the Petition of
ALMA ANDERSON f/k/a ALMA AHERN,
Petitioner-Appellee,

And Concerning
GEORGE J. ROBINSON,
Respondent-Appellant.



Appeal from the Iowa District Court for Johnson County, William L. Thomas, Judge.

On appeal from the district court's denial of his motion for an order implementing procedendo, the appellant claims the district court erred in refusing to modify the child support award. **REVERSED.**

Davis L. Foster of Foster Law Office, Iowa City, for appellant.

Linda M. Levey, Iowa City, for appellee.

Considered by Mahan P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

In this second appeal from a modification decree, the parties ask us to decide the effect of our prior opinion on their child support obligations. The district court concluded our opinion did not affect its modified child support decree. Because we disagree with the district court's reading of our earlier opinion, we reverse.

I. Background Facts and Proceedings

Alma Anderson and George Robinson married and had one child, Jackie. When the parties divorced, the court awarded Anderson physical care of Jackie. The parties later stipulated to a modification of the decree, approved by the court, which transferred Jackie's physical care to Robinson. The stipulation further imposed a child support obligation on Anderson.

Robinson applied to modify this stipulated modified decree. At trial, the parties raised issues of physical care, visitation, and child support. The court heard evidence that Jackie spent Saturday afternoon through Wednesday afternoon with his father and the balance of the week with his mother. Additionally, testimony revealed Robinson did not require Anderson to pay him child support as set forth in the stipulated modified decree and executed a satisfaction of the child support obligation that he gave to Anderson.

The district court ruled that the parties essentially had a "divided physical care arrangement" which would not be disturbed. The court ordered the parties to "share physical care" pursuant to the schedule they had adopted. With respect to back due child support, the court noted Robinson never expected to receive support pursuant to the stipulated modified decree and ordered him to file

a satisfaction of the obligation owing under that decree. As for future child support, the court calculated the amounts that would have been owed by each party had he or she been the non-custodial parent, then set off those amounts, arriving at a final child support obligation for Anderson of $222.17.

George appealed. In an unpublished opinion, our court characterized the care arrangement ordered by the district court as "joint physical care."[1] We concluded "the trial court should not have modified the decree to provide joint physical care" and we reversed that portion of the court's ruling. We said nothing about child support.

Procedendo issued, directing the district court "to proceed in the manner required by law and consistent with the opinion of the court of appeals." Soon after, George filed a "motion for order implementing procedendo." He argued that, in light of our opinion overturning the joint physical care ruling, a set-off of the parties' respective child support obligations was no longer appropriate. The district court disagreed, concluding that, because we said nothing about child support, the set-off amount of $222.17 would remain in effect. George appeals again.

II. Effect of Prior Opinion

We must decide the meaning and effect of our prior physical care ruling on the parties' child support obligations. Robinson argues we clearly and

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[1] Iowa Code section 598.1(4) (1997) defines joint physical care as:

> [A]n award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

unequivocally changed the joint physical care arrangement ordered by the district court, which in turn necessitated a change in the child support portion of the court's ruling. Anderson responds that our prior opinion only took issue with the district court's terminology and did nothing to alter the joint physical care arrangement previously established by the parties. Because the child support order was based on a joint physical care arrangement, Anderson argues it did not need to be changed.

We enjoy broad latitude in interpreting our prior rulings. *In re Roggentien*, 464 N.W.2d 896, 898 (Iowa Ct. App. 1990). We determine our intent by reviewing all parts of the ruling, giving effect to what is clearly implied and to what is expressed. *Id.*

We agree with Robinson's reading of our prior opinion. On the issue of physical care, we stated:

> For two reasons we conclude the trial court should not have modified the decree to provide joint physical care. First, neither party requested such a modification. Second, the one change in circumstances shown by the record and found by the trial court is of a limited nature and the trial court's ruling ordered the parties to take actions designed to resolve the problem caused by that change in circumstances. Accordingly, that limited change in circumstances is not of such a material, substantial and more or less permanent or continuous nature as would require or justify such a modification. We reverse that part of the trial court's decree of modification which ordered joint physical care.

The effect of our prior opinion was to reverse the joint physical care arrangement ordered by the district court and to reinstate the arrangement set forth in the stipulated modified decree. Under that arrangement, Robinson had physical care of Jackie and Anderson was entitled to visitation. Our opinion became the law of the case and was binding on the district court and in

subsequent appeals. *United Fire and Cas. Co. v. Iowa Dist. Court for Sioux County,* 612 N.W.2d 101, 103 (Iowa 2000); *State v. Grosvenor,* 402 N.W.2d 402, 405 (Iowa 1987).

We must next decide the effect of our ruling on the district court's child support order. A reversal of a judgment on the appeal of one claim may require reversal of the judgments entered on other claims, even where no independent error has been established on the other claims. *Schwennen v. Abell,* 430 N.W.2d 98, 103 (Iowa 1998), *appeal after remand,* 471 N.W.2d 880; *Wolfe v. Graether,* 389 N.W.2d 643, 659 (Iowa 1986) (noting errors affecting jury's ability to determine breach of contract issues also required reversal with respect to tortious interference issues).

There is no question the child support order was neither challenged nor addressed in the prior appeal. Yet, there is also no question that the order was premised on a joint physical care arrangement that we rejected. As our highest court noted in *In re Marriage of Fox,* 559 N.W.2d 26 (Iowa 1997), it is generally inappropriate to set off a non-custodial parent's child support obligation, even if the child spends "about equal time" with that parent. *Fox,* 559 N.W.2d at 28. The court noted that where one party is vested with physical care, the child support guidelines "incorporate the reasonable living expenses of the noncustodial parent and need no further adjustment." *Id.* at 29. Here, the effect of our prior ruling was to vest Robinson with physical care. Anderson retained liberal visitation, caring for Jackie three days per week at the time of the modification trial. The record does not reveal Anderson incurred unusual or excessive expenditures on behalf of Jackie. *See Fox,* 559 N.W.2d at 29. Under

these circumstances, we conclude our prior opinion on physical care precludes a set-off of the parties' child support obligations. *Cf. In re Marriage of Swenka*, 576 N.W.2d 615, 618 (Iowa Ct. App. 1998) (noting reversal of joint physical care ruling required modification of child support provision of decree).

III. Amount of Child Support

Robinson argues he is entitled to $429.57, the amount of child support attributable to Anderson under the old child support guidelines, absent a set-off. Anderson contends we must apply the guidelines that went into effect on August 1, 2000 to cases pending on appeal as of that date. We agree with Anderson. *See In re Marriage of Roberts,* 545 N.W.2d 340, 343 n.2 (Iowa Ct. App. 1996). Accordingly, based on gross income figures of $14,000 for Robinson and $29,625 for Anderson and based on Anderson's request to have us credit her with visitation in excess of 127 days per year, we determine Anderson's monthly support obligation under the new guidelines to be $321.06.

IV. Appellate Attorney Fees

Anderson seeks appellate attorney fees. An award rests within our sound discretion. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). As Anderson only partially prevailed and has income that substantially exceeds Robinson's, we decline to award her fees.

V. Disposition

The effect of our prior opinion was to vest Robinson with physical care of Jackie, subject to visitation by Anderson. Anderson must pay Robinson child support in the amount of $321.06 per month. This order shall not be retroactive.

REVERSED.