

FILED

JUN 29 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOY LEE HOVDEN AND JACK ARNOLD HOVDEN

Upon the Petition of)

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JOY LEE HOVDEN,)

Filed June 29, 1988

Petitioner-Appellee,)

And Concerning)

JACK ARNOLD HOVDEN,)

8-217
87-1023

Respondent-Appellant.)

Appeal from the Iowa District Court for Marshall County (No. D-2079),
Carl D. Baker, Judge.

Petitioner-appellee appeals the modification of a dissolution decree, claiming respondent-appellant should be required to pay more support for the younger child and to assume all of the older child's college expenses. **AFFIRMED.**

Max H. Buck of Grimes, Buck, Schoell & Beach, Marshalltown, for petitioner-appellant.

Bradley J. Rutherford of Rutherford Law Office, Marshalltown, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM

The petitioner, Joy Lee Hovden (now Joy Best), sought a modification of the decree of dissolution entered in this action on August 28, 1978, as the same was last modified in 1983. She requested that respondent Jack Hovden pay *all of the college expenses of their older daughter, Heidi*; that Jack include the children upon his employer's health insurance; that she be reimbursed for orthodontic expenses already incurred for both children; and that she be allowed to claim both children as personal exemptions on her income tax returns. She also requested an increase in child support for their daughter, Jodi Hovden, and that Jack pay her attorney fees and the costs of this action.

The trial court ordered: that Jack Hovden contribute one-half of Heidi's college education expenses; that Jack include both children upon his medical, dental, and optical insurance provided by his employer, as long as the children are considered dependents; and, that henceforth, each party was responsible for one-half of the medical expenses of the children not paid by insurance. Joy's request that she be allowed to claim both children as personal exemptions on her tax return as well as her request for an increase in child support was denied. The court ordered that each party would pay his or her attorney fees and that the costs be taxed one-half to each of the parties.

Joy appealed, claiming the trial court erred in failing to increase the support payable for Jodi and that the court should have ordered Jack to pay \$600 per month for Jodi's support, instead of \$219. During trial, she indicated that she was requesting \$838.75 per month for Jodi's support. The trial court refused to increase the child support for Jodi. Our scope of review is de novo. Iowa R. App. P. 4. We affirm.

Joy claims in her brief that, "The child is entitled to share in the father's increase in ability to pay." Under Iowa Code section 598.21(8) (1987), a court

may modify a dissolution decree when there has been a showing of a substantial change in circumstances. In State ex rel. Mohr v. Mohr, 377 N.W.2d 247, 249 (Iowa App. 1985), this court stated: "[P]arents have a duty to support their children at a decent standard of living given their earnings" We find no authority that would lead us to hold that each time there is an increase in the earnings of a noncustodial parent, there should be an increase in the child support payable by that parent. This record is devoid of any evidence that indicates the needs of this child have increased in such a way as to constitute a substantial change in the circumstances, justifying an increase in support.

We agree with the trial court that the petitioner has failed to carry her burden to show a substantial change in circumstances to require an increase in the child support payable for Jodi Hovden.

Joy also contends that Jack should have been ordered to pay all of the college expenses for Heidi's education. Under all the circumstances, we find that an equal sharing of those expenses is equitable.

Joy also complains of the court's failure to award attorney's fees. The award of attorney's fees is a matter within the discretion of the court. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). We do not find that the court's failure to award attorney's fees to Joy was an abuse of that discretion.

Having considered the whole record, we affirm the trial court.

AFFIRMED.

Donielson and Schlegel, JJ., concur; Oxberger, C.J., dissents.

I would increase Jack's child support payment and his obligation to pay college expenses His income has increased by \$23,907 His net worth has increased from \$10,460 to the present \$110,860 Joy is presently unable to work due to a back injury