FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RUTH ELIZABETH WALKER
AND GARY LEE WALKER

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Upon the Petition of)
RUTH ELIZABETH WALKER)
Petitioner-Appellant,)
And Concerning)
GARY LEE WALKER,) 9-76
88-844
Respondent-Appellee.)

Appeal from the Iowa District Court for Bremer County (17709), Stephen P. Carroll, Judge.

Wife appeals from a district court denial of a modification of her 1974 dissolution decree. **AFFIRMED AS MODIFIED.**

Dale E. Goeke, of Hagemann, Goeke & Egli, Waverly, for the petitioner-appellant.

Ralph E. Laird III, of Laird & Laird, Waverly, for the respondent-appellee.

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

OXBERGER, C.J. 323

This appeal involves the district court's denial of certain modification requests by petitioner Ruth Walker. We affirm as modified.

In the parties' 1974 dissolution decree, Ruth was given physical custody of their two sons, Jeff and Tim. Their father, respondent Gary Walker, was directed to pay $115 per month child support for each child. In 1984 the district court filed a modification decree having received a modification agreement from the parties. This decree allowed for the suspension of child support payments to Ruth while the boys lived with Gary, and specifically extended the support payments to age twenty-two should the boys attend college within the requirements set out in Iowa Code section 598.1(2) (1987).

The boys lived with Gary from approximately the summer of 1984 until late summer and early fall of 1986. The older son, Jeff, testified Gary was verbally abusive to both him and his brother Tim during the period. Both boys returned to Ruth's home. Jeff and Tim sought in-patient and out-patient counseling for severe depression and alcohol abuse respectively. Jeff was able to complete one year of college at the University of Northern Iowa in 1986.

The record shows Ruth put herself through college and law school after the dissolution. At the time of the hearing below she was working as counsel for a corporation in Keokuk, Iowa, and earned $25,469 in 1986.

Ruth's 1985 modification petition requested increased child support, money for college expenses, attorney fees and court costs. The hearing was held in 1987 and the district court's ruling required Gary to pay one-half of past and future medical expenses incurred by Jeff and Tim, provided the statutory conditions of section 598.1(2) are met, if incurred when they are over eighteen. All other requests were denied on the grounds Ruth had failed to prove a substantial change in circumstances since the filing of the 1984 modification decree and her ability to pay her own attorney fees and court costs.

On appeal Ruth reasserts the modification requests below and seeks appellate attorney fees and court costs. She argues the court erred in not looking back to 1974 to determine whether there has been a substantial and material change in circumstances, because the 1984 decree was simply an accommodation agreement between the parties which was not intended to resolve all the issues raised in the present petition.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially where the credibility of the witnesses is concerned, but we are not bound by them. Iowa R. App. P. 14(f)(7). The district court has discretion to modify dissolution decrees concerning the support and welfare of the children involved when there has been a substantial change in circumstances. Iowa Code § 598.21(8) (1987).

A distinction between the circumstances of 1974 or 1984 is unnecessary. We find Ruth has shown a material and substantial change of circumstances under either comparison in regards to the need to increase support payments to help pay the boys' post-high school educational expenses. Iowa Code section 598.21 specifically states such a need can support an increased award of child support. At the time the 1984 modification decree was entered neither boy was attending college. The same 1974 support payments of $115 per month mentioned in that decree may well have been appropriate if the boys sought a vocational or community college education while living at home. At the hearing below Ruth and Jeff testified significant loans and all of Jeff's savings in addition to this monthly payment was needed to pay the one-year costs incurred when Jeff attended U.N.I. in 1985-86.

Exhibits and testimony indicate the tuition, room and board, and book costs Jeff would incur when he continued college in 1987 would be $8,730. Gary's adjusted gross income in 1985 and 1986 was approximately $32,000. At one point in the trial Gary testified he was willing to increase his support award to $160 a month or $1,920 annually to help pay college expenses. Testimony and correspondence of the parties show they both feel the boys should be given some responsibility for college costs. We modify the district court's ruling to require each parent

to pay forty percent of the basic college costs of tuition, books, room and board as long as the requirements of Iowa Code section 598.1(2) are met. To make Ruth or the boys bear all costs above $115 per month in light of the increasing college costs today would possibly prohibit Jeff and Tim from getting post-high school educations. Both parents expressed strong desires to have their children receive college educations. Such a ruling accommodates the concerns of the parties, the welfare of the children, and is equitable in light of the earning capacities of Ruth and Gary.

We have reviewed Ruth's modification requests for attorney fees, court costs, and $10,000 for past expenses incurred and affirm the district court's denial of such awards. Attorney fees in modification actions are not a matter of right but may be awarded to the prevailing party in an amount deemed reasonable by the court. Iowa Code § 598.36 (1987). Courts look to each party's ability to pay. In re Marriage of Stanley, 411 N.W.2d 698, 703 (Iowa App. 1987). Each party shall pay his or her own attorney fees and costs of this appeal shall be divided equally between the parties.

AFFIRMED AS MODIFIED.