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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-581 / 88-1588

IN RE THE MARRIAGE OF SHERYL WOOD and RONALD DEAN WOOD

Upon the Petition of
SHERYL WOOD,

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Appellant,

And Concerning
RONALD DEAN WOOD,

Appellee.

Appeal from the Iowa District Court for Jones County, Paul J. Kilburg, Judge.

Appeal from a district court decision modifying a dissolution decree and ordering the transfer of certain real estate. **AFFIRMED AS MODIFIED.**

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

Michael W. Fay, Cedar Rapids, for appellee.

Considered en banc.

DONIELSON, J.

This is an appeal from a district court decision modifying a decree of dissolution concerning custody and support as well as providing for the transfer of real property. Sheryl Wood challenges the provisions for past and future support as well as the transfer of property.

The marriage of Sheryl Wood and Ronald Dean Wood was dissolved by decree on October 30, 1984. Four children were born of the marriage but the dissolution decree addressed only the custody of the two youngest. Joint custody of the two youngest sons was ordered with physical care of Tracey, born July 8, 1968, granted to Dean and the physical care of Terry, born December 3, 1973, placed with Sheryl. The decree required Dean to pay Sheryl $75 per week child support for Terry until he reached age 18 or graduated from high school. Provisions were made for continuation of the support if Terry should continue his education after high school. Sheryl was not required to pay child support to Dean. In addition, all real property, as well as livestock, grain, machinery and equipment was vested in both parties as tenants in common and not as joint tenants. Dean was given the right to manage the farm operations.

On November 19, 1985, the parties filed with the court a "Stipulation on Modification of Decree of Dissolution." The stipulation provided physical care of Tracey was to be

awarded to Sheryl. Dean was required to begin making child support payments of $600 per month beginning July 1, 1985. The stipulation specified no provision was being made for post-high school support for the sons. In addition, Sheryl was to transfer all of her interests in the farming operation to Dean in return for her release from any liability for the debts of the farming operation. The transfer was to include all of the farm operation's real estate.

In April 1986, Terry changed his physical residence and commenced residing with Dean. On October 14, 1986, Dean filed an application for modification of the decree. Dean sought a change in his support requirement based on the change in Terry's primary residence, and he requested Sheryl be required to pay him child support.

At trial, Dean sought a determination that Sheryl was required to deed him title to about seven acres of timberland pursuant to the 1985 stipulation. Sheryl did not object to resolution of this issue in the modification proceedings.

On September 28, 1988, the district court entered its findings of fact, conclusions of law and decree regarding modification. The district court ordered Dean be granted the primary physical care of Terry, and it determined Sheryl should pay $40 per week child support until Terry reached age eighteen or graduated from high school.

Concerning Dean's obligation for past due child support, the district court determined child support should be computed from the date of the 1985 modification in the amount of $600 until May 1, 1986, when it would terminate as to Terry because he had moved into his father's home. Thereafter it would continue to accrue in the amount of $300 until August 1, 1986, when it would terminate as to Tracey because he had reached his eighteenth birthday.

With regard to the issue of the timberland acreage, the district court determined the 1985 modification stipulation required Sheryl to deed any interest she had in the seven acres to Dean. It ordered Sheryl to transfer to Dean the real estate in question.

Sheryl has appealed the district court's decision. She contends it erred in: 1) retroactively modifying Dean's support obligation; 2) requiring her to pay child support; and 3) ordering her to deed the seven acres to Dean.

I. **Scope of Review.** To resolve the issues presented by the parties we turn to well-established principles. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision primarily on the particular circumstance of the

parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). Modification orders are contingent upon the existence of a substantial change in circumstances. Iowa Code § 598.21(8) (1987).

II. **Retroactive Reduction in Child Support.** The district court erroneously assumed it had the authority to find Dean's support obligation was effectively terminated as of May 1, 1986, when Terry moved into his father's home. The law is clear child support payments under a dissolution decree may not be reduced retroactively. In re Marriage of Shepherd, 429 N.W.2d 145, 146 (Iowa 1988). A court's authority to modify a dissolution decree does not authorize it to divest the rights of parties to child support accrued under the decree. Id. Even when a decree is modified, the payments which have accrued up to the time of modification cannot be affected. Id.

Absent equitable defenses not presented in this case, see Davidson v. Van Lengen, 266 N.W.2d 436, 439 (Iowa 1978) (estoppel by acquiescence and laches as defenses to action for collection of child support), the district court had no authority to retroactively reduce Dean's support obligations. A review of the dissolution decree and November 1985 modification reveals his support obligations terminated only upon Tracey and Terry's attainment of their eighteenth birthdays or high school graduation, whichever occurred later. Dean's support obligation for Tracey

continued through his eighteenth birthday on July 8, 1986. His support obligation for Terry continued until the district court rendered its ruling on the modification application on September 28, 1988. Sheryl may collect any support payments accrued prior to these dates. The trial court correctly recognized Dean's obligation, as modified by the November 1985 stipulation, was for $300 per month for each son.

III. Child Support. It is well established both parents have a legal obligation to support their children. Iowa Code 598.21(4); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). In establishing child support the courts are to consider the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had there not been a dissolution; the physical and emotional health needs of the child; the child's educational needs; the tax consequences to each party; and such other factors the court may determine to be relevant in an individual case. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984).

On the issue of child support for Terry, the district court noted the evidence established Sheryl had remarried

since the dissolution of the parties. Her husband is employed by Farm Services and earns approximately $15,000 to $20,000 per year. Sheryl is employed by the Anamosa Care Center and has a net income of approximately $1100 per month. Dean is engaged in farming on a fairly substantial scale. The district court noted that after the dissolution of the parties Dean had a substantial indebtedness; however, it appeared to the court much of this indebtedness had been dissolved and Dean now managed a fairly successful farming operation. The court noted Dean's farm income for 1987 showed a net income of approximately $100,000. More recent income figures were evidently not presented for the court's consideration.

In light of the obligation of each parent to support his or her children, yet recognizing the wide disparity in Sheryl and Dean's respective levels of income, we find the district court's decision in this matter to have been appropriate. We affirm its order that Sheryl pay $40 a week in child support. We modify the district court's decision to clarify the support obligation continues until Terry turns eighteen or graduates from high school, whichever occurs later. The district court's decision makes contradictory references on this point. Termination of support upon the occurrence of the later of these two events is consistent with the original decree and is more equitable.

IV. Timberland. Sheryl is correct that property divisions in dissolution decrees are generally not subject to modification. Heishman v. Heishman, 367 N.W.2d 308, 310 (Iowa App. 1985). However, in this case the seven acres of timberland were part of the parties' 1985 modification stipulation submitted to and implicitly approved by the trial court. As no appeal was ever taken, the modification is binding on this court.

A dissolution decree is to be construed like any other written instrument. The determinative factor is the intention of the court as gathered from all parts of the judgment. In re Marriage of Lawson, 409 N.W.2d 181, 182 (Iowa 1987). The decree is taken by its four corners to ascertain from its various provisions the court's intent. Matter of Estate of Jones, 434 N.W.2d 130, 132 (Iowa App. 1988).

The circumstances surrounding the entry of the November 1985 stipulation and its specific provisions indicate the seven acres of timberland were to be transferred to Dean in conjunction with all of the farm real estate. The district court did not err in its interpretation of the modified decree, and it correctly ordered Sheryl to transfer this property to Dean. Costs of this action are to be assessed equally between the parties.

AFFIRMED AS MODIFIED.