FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RICHARD E. DIETL and BEVERLY JOAN DIETL

Upon the Petition of)
RICHARD E. DIETL,) Filed April 15, 1977
Appellee,)
And Concerning)
BEVERLY JOAN DIETL,) 91
Appellant.) 2-58410

Appeal from Polk District Court - A. B. Crouch, Judge.

Appeal from order modifying economic provisions of prior dissolution decree. Modified and affirmed.

Dan Stamatelos, of West Des Moines, for appellee.

Robert C. Oberbillig, of Des Moines, for appellant.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

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CARTER, J.

This is an appeal by respondent, Beverly Joan Dietl, from the order of the trial court modifying the child support provisions of a dissolution decree.

The parties were married in March of 1956. Three children were born of the marriage: Rick, born February 8, 1957; Lizanne, born December 2, 1959; and Carry, born June 11, 1965.

The marriage was dissolved by decree entered June 12, 1972. Beverly was awarded custody of the three children. Richard was ordered to pay,

> ". . . for the support of the minor children of the parties, the sum of $120 per month, per child, until each of said children shall have reached the age of 19, become self supporting or dies, whichever shall first occur."

On March 20, 1975 Richard petitioned for modification of the 1972 decree, alleging a material change in circumstances, and seeking modification ". . . to clarify the obligation of Petitioner with regard to the minor children in the matter of higher education." On April 9, 1975 Beverly filed an answer and application for modification, alleging a material change in circumstances and seeking an increase in child support to "$200 per month per child as long as each child is a minor or is seeking higher education."

Following a hearing the trial court terminated the obligation of Richard Dietl to make child support payments for the benefit of his son Rick, and increased the sum of his support obligation for the benefit of his two other children from $120 to $130 per child, per month.

On appeal Beverly urges that the trial court erred (1) in refusing to continue child support for 18 year old Rick who had been accepted for admission to Drake University for the next fall term, and (2) in failing to require a greater amount of child support in view of Richard's increase in income and the effects

of inflation. Our review is de novo. Rule 334, Rules of Civil Procedure.

I. In assessing the trial court's modification order we are mindful of section 598.21, The Code, and the following admonition of the Supreme Court:

> "To justify modification of a child support provision some material change must be shown in the circumstances of the parties, financially or otherwise, making it equitable that other or different terms be imposed. A decree will not be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed conditions. Modification should be based upon a change of circumstances more or less permanent or continuous, not temporary, and where a change of financial condition of one or both of the parties is relied upon, it must be substantial." McDonald v. McDonald, 183 N.W.2d 186, 188 (Iowa 1971).

We believe the premature termination of the child support payments for Rick was justified on the record presented in the trial court. We do not base this conclusion upon the change in the legal age of majority; but rather on an overall material change in circumstances. At the time of the modification hearing Rick had graduated from high school, was 18 years old, was going to spend the summer months working full-time either in Waterloo or Des Moines, and had been admitted to Drake University for the next fall term. Most significantly, Rick had arranged to live with his father while attending college. Under these circumstances we agree that Richard should not be required to make child support payments to Beverly on account of Rick for the entire period remaining under the decree. Richard and Rick have agreed on the extent of Richard's contribution towards Rick's college expenses. We do not deem it necessary to mandate the extent of Richard's contribution at this time although we do not hold that we are without power to do so now or at a later date. It would be premature to act at this time with respect to the college expenses if any, which may be incurred in the future by the other two children.

The trial court's order terminating support does not fix the date of termination. We conclude that monthly child support payments for Rick and the other two children should continue at the rate fixed in the original decree through and including the payment for August, 1975.

With respect to the child support payments on behalf of the other two children we conclude that such payments must be increased based upon Beverly's needs, Richard's increased ability to pay and the termination of the child support ear-marked for Rick under the original decree. Beverly's child support expenses will not abate pro rata. We hold that commencing with the child support payments for the month of September, 1975, the monthly payments shall be $300 per month while two children are entitled to support under the decree and $175 per month when only one child is entitled to support. The duration of child support payments shall continue as fixed in the original decree.

The case is remanded for a decree consistent with this opinion.