FILED
JUN 30 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOAN M. TOLSDORF and LARRY D. TOLSDORF

Upon the Petition of	)	
JOAN M. TOLSDORF,	)	Filed June 30, 1978
Appellee,	)	
And Concerning	)	556
LARRY D. TOLSDORF,	)	2-61062
Appellant.	)	

Appeal from Polk District Court - Richard A. Strickler, Judge.

Respondent appeals from trial court's order dismissing his application to modify the parties' dissolution decree. Affirmed.

Patrick H. Payton and Amanda M. Dorr, Des Moines, for appellant.

William A. Price and David B. Stevens, Des Moines, for appellee.

Heard by Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent, Larry D. Tolsdorf, appeals from an order fixing his child support arrearage as of July 21, 1977 at $2580.84. His contention is that the parties, by contract, reduced his child support obligation from $37.50 per child per week to $25. He does not challenge trial court's dismissal of his application to modify the dissolution decree.

The parties are agreed that unmarried parents may contract between themselves regarding child support, if the child's best interests are not harmed thereby. They also agree that the contract must be supported by sufficient consideration. See, e.g., Anthony v. Anthony, 204 N.W.2d 829 (Iowa 1973); Denning v. Denning, 185 N.W.2d 238 (Iowa 1971); Herb v. Herb, 251 Iowa 957, 103 N.W.2d 361 (1960).

In the instant case the parties' agreement provided that each party would claim one child as a dependent for income tax purposes, that the child support would be reduced and that visitation would be altered. The dispute seems to be on the question of whether the agreement was supported by consideration.

The agreement was signed at a time when respondent was $1913 behind in his support payments. There is some suggestion that he used the threat of refusing to pay at all as a weapon to coerce petitioner's consent. The agreement's child support provisions required respondent to do nothing that he was not already bound to do, and gave petitioner nothing that she was not entitled to already. He argues, however, that he gave up one dependency exemption to which he was otherwise entitled, and cites Treas. Reg. § 1.152-4 (d) (3) in support. The regulation cited does not assist him. That provision gives respondent both dependency deductions "notwithstanding any provision to the contrary contained in. . . a written agreement. . ." unless petitioner can show that she provides more support than respondent. The agreement then resulted in no change of legal rights under the cited regulation.

We find the story related by petitioner, Joan M. Tolsdorf, to be more persuasive, as apparently did trial court. She stated that the parties originally agreed that she was to take both children as dependents, but that the Internal Revenue Service suggested that respondent was entitled to at least one. The written agreement, therefore, simply recognized and recorded an already existing situation.

In addition, we note some serious questions on the subject of whether the best interests of the children were harmed by the agreement. Our disposition of the consideration issue makes analysis of the interests question unnecessary, however. Likewise, the proceedings before, and exchanges with, Judge Crouch do not bear on the consideration issue and are thus of no relevance here.

AFFIRMED.