FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDITH J. WOLF AND RAYMOND L. WOLF

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Upon the Petition of)

JUDITH J. WOLF,)

Petitioner-Appellee/ Cross-Appellant,)

And Concerning)

RAYMOND L. WOLF,)

Respondent-Appellant/ Cross-Appellee.)

Filed November 26, 1986

6-365
85-1385

Appeal from the Iowa District Court for Polk County (No. DM CD 30-17849) - Ray A. Fenton, Judge.

Respondent husband appeals and petitioner wife cross-appeals the trial court's ruling on respondent husband's petition for modification of a dissolution decree. **AFFIRMED AS MODIFIED.**

James L. Sayre of Sayre & Gribble, Des Moines, for appellant.

David L. Brown of Hansen, McClintock & Riley, Des Moines, for appellee.

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

SCHLEGEL, J.

Respondent husband appeals and petitioner wife cross-appeals the trial court's ruling on respondent husband's petition for modification of a dissolution decree. We affirm as modified.

The marriage of petitioner Judith J. Wolf and respondent Raymond L. Wolf was dissolved in 1981. The dissolution decree awarded custody of the parties' minor child, Laura, born in 1966, to Judith and directed Raymond to pay Judith $300 per month child support and $500 per month permanent alimony. (The parties' other child, Daniel, born in 1962, was no longer a minor.)

In 1984, Raymond filed a petition for modification of the dissolution decree. He asserted that Laura had come to live with him and that Judith was now able to support herself. He asked that Judith be required to pay child support and that his alimony obligation to Judith be terminated. Judith answered the modification petition, and trial was held. Afterward, the trial court entered an order which (1) denied Raymond's requests for an award of child support from Judith and for termination of his alimony obligation to Judith, (2) directed him to pay all of both children's college expenses initially and Judith to repay him for one-quarter of the expenses after he submitted an itemized list to her, and (3) awarded Judith attorney fees of $1,051.55. Raymond has appealed and Judith has cross-appealed from the trial court's order.

On appeal, respondent husband asserts (1) that the trial court should have terminated petitioner wife's alimony award, and (2) that the trial court should not have awarded petitioner wife any attorney fees. On cross-appeal, petitioner wife asserts (1) that the trial court should not have required the parties to pay the college expenses of one of their children because the child is now past age 22, and (2) that the method specified by the trial court for payment of the chil-

dren's college expenses is inequitable. Petitioner wife requests attorney fees on appeal.

Our review is de novo. Iowa R. App. P. 4. Although we give weight to the findings of fact made by the district court, we are not bound by them. Iowa R. App. P. 14(f)(7).

Iowa Code section 598.21(8) (1985) provides that the court may subsequently modify orders made under this section when there is a substantial change in circumstances. The trial court has reasonable discretion in determining whether modification is warranted, and that discretion will not be disturbed on appeal unless there is a failure to do equity. In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983). A number of principles emerge from our cases which guide our application of the statutory provision: 1) There must be a substantial and material change in the circumstances and this change must occur after the entry of the decree; 2) it must appear that continued enforcement of the original decree would, as a result of the changed circumstances, result in positive wrong or injustice; 3) the change in circumstances must be permanent or continuous rather than temporary; 4) the change in financial conditions must be substantial; 5) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered. Id. In general, the burden of proof in modification proceedings to show a substantial change in circumstances is with the party seeking modification. See In re Marriage of Schober, 379 N.W.2d 46, 47 (Iowa Ct. App. 1985).

We see no evidence in the record that would suggest that any change of circumstances alleged by Raymond was not within the contemplation of the trial court when the original decree was entered. Raymond stipulated that he would pay Judith $500 per month permanent alimony, ceasing only upon the death of either party or the remarriage of Judith. It is not reasonable to think

that Judith would remain unemployed for life. Neither party has died nor has Judith remarried. It can be assumed that the permanent alimony provision was an important consideration for Judith in her negotiating and assenting to the settlement agreement. We do not think that Judith's job, obtained three years after the divorce, for $634 every two weeks changes the obligation of Raymond to pay the agreed-upon amount. The continued enforcement of the decree will not result in any positive wrong or injustice. The husband's income continues to be approximately $50,000 per year. We believe that the husband should be held to the stipulation.

Raymond appears to argue that in this case the property division and the alimony payments were both designed to be used as general support for Judith. While it is true that the economic provisions of a decree may be related, provisions for alimony and property division are distinguishable and have different purposes. Petition of Fenchel, 268 N.W.2d 207, 209 (Iowa 1978). Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint venture. Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966). In the present case, it is not particularly difficult to separate the relationship between the property division and the alimony provision. Neither the payments for Judith's interest in the company nor the payments on the house which Judith received as part of the property settlement should be counted as part of the alimony provisions. The payment of the property division in installments is for the convenience of the parties and is no substitute for the alimony support to which Judith is entitled. See In re Marriage of Hitchcock, 309 N.W.2d 432, 438 (Iowa 1981). This income is clearly only a part of the property settlement. Absent fraud, coercion, or other grounds on which ordinary judgments may be reviewed, modified, vacated, or set aside, a property division in a dissolution decree cannot

be modified or vacated. In re Marriage of Prendergast, 380 N.W.2d 431, 433 (Iowa Ct. App. 1985). We believe the $500 alimony payment serves the purpose of permitting Judith the opportunity of becoming self-supporting at a standard of living reasonably comparable to the standard she enjoyed during marriage. See Iowa Code section 598.21(7)(b) (1985).

Section 598.36 of the Iowa Code provides that in a proceeding for the modification of an order or decree, the court may award attorney fees to the prevailing party in an amount deemed reasonable. See In re Marriage of Shima, 360 N.W.2d 827, 829 (Iowa 1985). The court acted within its discretion in the award of $1,051.55 in attorney fees to Judith. See In re Marriage of Giles, 338 N.W.2d 544, 547 (Iowa Ct. App. 1983).

In her cross-appeal, Judith asserts that the trial court improperly required the parties to pay college expenses for the children beyond the age of 22. Iowa Code section 598.1(2) (1985) provides that support may include payment for a college student up to the age of 22. We will not impose an obligation on divorced parents toward their adult offspring after those offspring reach the age of 22. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa Ct. App. 1984). Consequently, Judith has no obligation to make payment or reimburse Raymond for any expenditures on college education for any child beyond the child's 22nd birthday. She is responsible to pay for one-fourth of the expenses for tuition, books, room, and board for the minor child up to the child's 22nd birthday, as this is part of the support ordered by the court.

Judith also requests that payment of her one-fourth amount of college expenses be paid directly through the school. The court ordered that Judith should reimburse Raymond upon his submitting to her an itemized statement for tuition, books, room, and board expenses of the children who are attending college.

We do not agree with either approach. We think that an order to pay child support, which may include expenses incurred while the child is in college, should be more precise than one-fourth of the expenses submitted by the custodial spouse. Custody payments, including those for college education, should be paid directly to the Clerk of Court. These payments should be of a specified, predictable amount, payable monthly. Raymond submitted a projected expenditure of approximately $5,000 for the minor child's yearly educational expenses. Judith does not dispute this figure, and we find the sum to be reasonable. Therefore, we order that Judith pay the amount of $105 to the Clerk of Court on the first of each month until December 1, 1988, the date on which the minor child reaches the age of 22. These payments need only continue while the minor is enrolled in one of the types of institutions enumerated in section 598.1. We extend these payments to twelve months instead of the nine-month school period in the interests of regularizing the payment schedule. Judith's responsibility to pay one-fourth of the minor child's expenses began on August 1, 1985, the date specified in the trial court's ruling. Judith, therefore, is responsible for making one lump sum payment to the Clerk of Court for any unpaid amounts from August 1, 1985, to the present. This payment should be made within sixty days of the filing of this opinion.

Judith requests attorney fees on appeal. In awards of attorney fees, the court considers the resources of the party requesting such fees, the ability of the other party to pay, and whether the requesting party was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). The primary consideration in making an award of attorney fees in a dissolution proceeding is the resources of the parties. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa Ct. App. 1982). After a thorough review of the record and resources of the parties, we find $2,500 is an

appropriate award of attorney fees. Judith is entitled to be compensated for this amount by Raymond. Costs are assessed to Raymond.

We affirm the trial court's ruling that alimony should not be terminated and that Judith was entitled to attorney fees; we agree with petitioner that all obligations for college expenses terminate when each child reaches the age of 22. We also have ordered that support payments by Judith for the minor's college education should be paid in the specified amount to the clerk of court. Therefore, we modify the trial court's ruling to this extent.

AFFIRMED AS MODIFIED.