IN THE COURT OF APPEALS OF IOWA

FILED
MAY 0 1993

No. 3-090 / 92-1292

IN RE THE MARRIAGE OF JON T. NEWSOME AND JANELLE M. NEWSOME

Upon the Petition of
JON T. NEWSOME,

Appellee,

And Concerning
JANELLE M. NEWSOME,

Appellant.

000459

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

The wife appeals the district court order denying her application for modification of child support provisions of parties' dissolution decree. **AFFIRMED IN PART, REVERSED IN PART.**

James L. Pillers of Pillers, Pillers & Pillers, P.C., Clinton, for appellant.

Jeffrey L. Farwell of Farwell & Bruhn, Clinton, for appellee.

Heard by Schlegel, P.J. and Hayden and Habhab, JJ.

HAYDEN, J. 000460

Jon and Janelle Newsome were married on October 6, 1984. They have one minor child, Jordan, born February 29, 1988.

On March 20, 1989, the district court entered its decree dissolving the Newsomes' marriage. The court awarded Janelle primary physical care of Jordan and gave Jon visitation rights. It also ordered Jon to pay $240 per month in child support and awarded Janelle the dependent tax exemption.

On May 21, 1992, after learning Janelle planned to move to Georgia and take Jordan with her, Jon filed an application for modification of the dissolution decree. Jon requested physical care of Jordan be transferred to him and the tax exemption be awarded to him. Janelle counterclaimed, requesting an increase in the amount of child support and attorney fees.

The district court determined Jon failed to show a substantial change in circumstances to warrant transfer of the primary physical custody of Jordan. The court, however, determined Jon should have reasonable visitation despite the fact Jordan would be living in Georgia. The court ordered Jon to pay all of the transportation expenses for the visits. Apparently, in light of the substantial transportation expenses, the court transferred the dependent tax exemption to Jon. The court also refused to increase child support.

000461

Janelle appeals. She contends the trial court erred in failing to increase Jon's child support obligation, transferring the tax exemption to Jon, and failing to award attorney fees.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id.

I. Child Support. On appeal, Janelle seeks an increase in Jon's child support obligation. The district court refused to apply the guidelines in determining his support obligation. The court, however, ordered Jon to pay all costs of transportation for Jordan's visits. We reverse the district court and apply the child support guidelines. In doing so, we also modify the obligation of transporting Jordan. If round trip transportation is purchased or used, the parties shall divide the transportation costs, or if one way forms of transportation are used, each parent shall pay the costs of one-way transportation.

Janelle has proven the financial circumstances of the parties had changed and warrants a modification. The facts of this case do not justify a deviation from the child support guidelines. The record shows Jon's income has increased substantially since the dissolution decree was filed. At the time of the modification hearing, Jon's

000462

gross annual income equaled $30,000. The record shows Jon's net monthly income is $1588.00. Janelle is unemployed and receives Aid to Dependent Children payments and food stamps. We find, however, Janelle is capable of earning a gross income of $1000 per month. Based on these net monthly income figures, we apply a percentage of 23.8% from the one-child chart. We order Jon to pay $378 per month in child support to Janelle. We reverse the district court on this issue.

II. Tax Exemption. In view of the financial situations of the parties, we affirm the trial court's award of the tax exemption to Jon. Jon shall receive the tax exemption for Jordan if he is current for all of his child support at the end of each taxable year.

III. Attorney Fees. The trial court awarded $250 in attorney fees to Janelle. She argues the award was insufficient. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We affirm the trial court on this issue.

Janelle also requests attorney fees on appeal. We order Jon to pay $500 toward Janelle's attorney fees on appeal.

000463

We affirm the trial court's order in all respects except the child support award. Costs of this appeal are assessed to Jon.

AFFIRMED IN PART, REVERSED IN PART.