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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

RODNEY P. WESTERN,)
Respondent-Appellant,) Filed April 29, 1980
vs.)
JUDITH D. WESTERN,) 0-78
Petitioner-Appellee.) 2-64106

Appeal from Marshall District Court - Paul E. Hellwege, Judge.

Respondent appeals child support awards granted petitioner in modification of dissolution decree. - Affirmed.

Charles King, of Pattie, Hinshaw & King, Marshalltown, for respondent-appellant.

Marie A. Condon, of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for petitioner-appellee.

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

PER CURIAM

Respondent, Rodney P. Western, appeals child support awards granted petitioner, Judith D. Western, in modification of dissolution decree. We affirm.

The marriage of Rodney and Judith was dissolved October 1, 1974. The dissolution decree granted custody of the couple's two children, Jacey and Jocelyn, to Rodney and provided "no alimony or child support shall be awarded to either party herein." In July 1978, the children began living with Judith. She then petitioned for modification of the dissolution decree and the trial court modified the child custody award in her favor and ordered Rodney pay child support of $150 per month for support of Jacey for the months of May and June 1979 and $150 per month for support of Jocelyn through June 1983 unless she died, married, or became self-supporting prior to that time. Rodney appeals the child support award and our review of his claims is de novo. Iowa R. App. P. 4.

Rodney first asserts the trial court incorrectly ruled his claim for contribution of support during his four years of custody was barred by the provision of the original decree that stated no child support would be awarded. Rodney claims under Brown v. Brown, 269 N.W.2d 819, 822 (Iowa 1978), an offset to his future support obligation should have been allowed for his past child support contributions. He further claims the trial court erred by refusing to enlarge its findings to include the extent to which Judith contributed to the children's support while they were in his custody. In Brown, the court reversed prior Iowa law and held an action for past child support could be maintained, subject to traditional defenses such as laches, waiver, or estoppel. We find the original dissolution decree here provides such a defense and the trial court correctly ruled Rodney's claim was barred.

The dissolution decree provided that no child support would be awarded. This provision on support was incorporated in the decree as the parties previously had stipulated. Clearly, the stipulation was a result of bargaining between the parties and for some reason, not indicated by the record, Rodney agreed to release Judith from her support obligation. By operation of the original decree, Judith had no obligation to provide support during the time the children were in Rodney's custody. Unlike Brown, a specific provision on support was entered in the original decree and the trial court here correctly ruled that provision barred Rodney's claim for contribution or offset for

support he provided during his term of custody.

Rodney also asserts the modification for future support is erroneous. Rodney claims since he released Judith from her share of the mutual support obligation she should be compelled to give up her right to secure support from him. While at first blush this may seem logical, further examination of the record fails to demonstrate such mutuality was intended. We are not advised why Rodney relinquished his right to secure Judith's assistance; therefore, we cannot say the same reasons now require us to order Judith to give up her right to seek child support. Rather, Judith's right to seek support is not affected by the original decree since it was relative only to the situation then presented. That situation changed when the children's custody shifted to Judith and she was not precluded from bringing the modification action to seek support.

Rodney further claims that even if Judith could obtain support, the circumstances of the case do not justify the award entered below. He also contends the findings of the trial court should have been enlarged to show whether Judith's "total financial circumstances" made his support necessary.

Guidelines for child support awards were set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). As stated there, "The difficulty is not in the applicable legal principles but in determining what is justified under the facts presented." Id. In its order denying Rodney's motion for enlargement, the trial court indicated it had considered the income of the respective parties and that of their present spouses when it entered the child support award. The record indicates Rodney's gross income from salary in 1978 was $20,434 and his present wife had gross earnings of $33,429 that year. The record further indicates Judith's gross income in 1978 was $17,997 and her present husband grossed $25,697 in that year. In light of those facts, and in light of the mutual support obligations of Rodney and Judith, Id., we find the trial court's award of child support justified.

We have reviewed Rodney's challenges to the trial court judgment and find the orders entered below should be affirmed.

AFFIRMED.