FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF SUE ELLEN JENSEN AND KEITH LYNN JENSEN

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Upon the Petition of	)	
SUE ELLEN JENSEN, n/k/a SUE ELLEN WEBER,	)	Filed January 27, 1988
Petitioner-Appellee,	)	
And Concerning	)	7-345 86-1749
KEITH LYNN JENSEN,	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Cedar County (D-288), Edward B deSilva, Jr., Judge.

Respondent husband appeals the trial court's order on application for modification of the parties' original dissolution decree. **AFFIRMED.**

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for respondent-appellant/cross-appellee.

James L. Tappa of Spector, Tappa, Kopp & Nathan, Rock Island, Illinois, for petitioner-appellee/cross-appellant.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J. 109

Respondent husband appeals the trial court's order on application for modification of the parties' original dissolution decree. Respondent contends that the trial court erred in increasing his child support obligation from $100.25 per month to seventy-five dollars per week and in extending his potential obligation for support to age twenty-two if the criteria of Iowa Code section 598.1(2) are met. Petitioner wife cross-appeals the trial court's decision not to require respondent to pay any of petitioner's attorney fees. Our scope of review is de novo. Iowa R. App. P. 4. We affirm.

I. Background. The marriage between Sue Ellen Jensen and Keith Lynn Jensen was dissolved by decree in 1975. At that time, Sue Ellen was a school teacher earning $6,500-$6,700 per year while Keith was attending college at the University of Iowa and tending bar, earning $4,000 per year. The parties had a son, Dane, who was born in 1971. The parties stipulated that Sue Ellen would have legal custody of Dane and would receive $50.25 per month child support, increasing to $100.25 per month in January 1979. The support payments were to continue until the child reached age nineteen, graduated from high school, or married, whichever occurred first. In 1983 Keith was given temporary custody of Dane and support payments were discontinued during this period. Dane later returned to Sue Ellen and in 1986 Sue Ellen petitioned for modification of the original dissolution decree.

II. Child Support. To justify modification of a child support decree, there must be evidence of a substantial and material change of circumstances from those circumstances which existed at the time the decree was entered. Iowa Code § 598.21(8) (1985); Mears v. Mears, 213 N.W.2d 511, 515 (Iowa 1973). In the instant case, we believe that there has been a sufficient change of circumstances to justify the trial court's modification of the amount of child support.

At the time of the original decree in 1975, Keith earned approximately $4,000 per year, while Sue Ellen earned approximately $6,500-$6,700 per year. In 1979, when the decree automatically increased Keith's child support payments to $100.25 per month, Keith earned approximately $7,000 per year and Sue Ellen earned approximately $9,000-$11,000 per year. At the time of the modification proceedings, Keith earned $32,000 per year as a teacher plus $2,000 per year as a tour representative for Adolf Coors Co. and $245 per year as a sports official. At that time, Sue Ellen earned $38,000 per year. The evidence shows that Dane's needs and living expenses have increased since the 1979 child support increase went into effect. In 1979, Dane was an eight-year-old boy; he is currently a sixteen-year-old teenager. His clothing expenses, school expenses, food expenses, social and activity expenses, and personal expenses have all increased as he has aged. Sue Ellen testified that it costs her approximately $150 per week to provide for Dane's living expenses. The trial court ordered that Keith should pay half of that amount--seventy-five dollars per week.

Sue Ellen also testified and the record shows she pays her present husband $600 per month to live in his home. Her husband's home is paid for and he earns approximately $24,000 annually. She buys the groceries for herself, son Dane, and her present husband. Her present husband pays for the large purchases of meat. She also contributes $150 per month toward payment of their home's real estate taxes and $150 per month for home maintenance. These costs and expenditures will continue even after the son, Dane, no longer resides with Sue Ellen and her present husband. We acknowledge the costs for groceries may be less when Dane is no longer a member of Sue Ellen's household. These increased costs are clearly for the benefit of Sue Ellen and her present husband also. We modify Keith's obligations for Dane's child support to $50 per week

until Dane attains the age of 18 years of age or he completes his high school education, whichever is the longest.

Keith also objects to the trial court's extension of his potential child support obligation to age twenty-two if the criteria of Iowa Code section 598.1(2) are met. He contends that there were no material and substantial changes of circumstances which occurred since the entry of the dissolution decree which would justify extending the time of Keith's child support obligation. We believe, however, that there has been such a change of circumstances to allow an extension of Dane's child support to age twenty-two if the criteria of Iowa Code section 598.1(2) are met. Section 598.1(2) of the Iowa Code states that child support obligations "may include support for a child who is between the ages of eighteen and twenty-two years who is . . . in good faith, a full-time student in a college, university, or area school; or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun . . . ." Section 598.21(8)(i) of the Iowa Code (1987) provides for modification of child support when there are changes in the educational needs of a child. Sue Ellen testified that Dane has expressed the desire to attend college. Nothing in the original dissolution decree nor the testimony presented at the modification proceeding indicated anything to support the argument that Dane's college expenses were within the trial court's contemplation at the time of the dissolution. Thus, since Dane's college education is now at issue, there is a substantial change in circumstances. We therefore hold that the trial court correctly extended the child support obligation to cover Dane's potential college expenses.

III. **Attorney Fees.** Sue Ellen cross-appeals the trial court's denial of her request for attorney fees. Under section 598.36 of the Iowa Code, a court may award reasonable attorney fees to the prevailing party in a modification proceeding. We conclude that the equities of this case do not justify an award

of attorney fees, see In re Marriage of Harvey, 393 N W 2d 312, 314 (Iowa 1986), and therefore, we affirm the trial court's denial of Sue Ellen's request. Sue Ellen also requests an award of attorney fees incurred in connection with this appeal Upon consideration of the relative financial conditions of the parties, see In re Marriage of Erickson, 228 N W 2d 57, 59 (Iowa 1975), we conclude that the parties should each pay their own appellate attorney fees. Costs are assessed one-half to each party

AFFIRMED AS MODIFIED.