

IN THE COURT OF APPEALS OF IOWA

No. 0-316 / 89-1166

FILED

NOV 29 1990

CLERK SUPREME COURT

IN RE THE MARRIAGE OF JANET LEA DIRKS AND DENNIS DEAN DIRKS

Upon the Petition of
JANET LEA DIRKS,

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Appellee,

And Concerning
DENNIS DEAN DIRKS,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County, James L. Beeghly, Judge.

The husband appeals a dissolution decree, challenging
his child support obligation. **AFFIRMED AS MODIFIED AND
REMANDED.**

Robert W. Thompson, Reinbeck, for appellant.

Samuel Beatty of Mosier, Thomas, Beatty, Dutton, Braun
& Staack, Waterloo, for appellee.

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

SCHLEGEL, J.

Janet and Dennis Dirks began to cohabit in 1976 and were ceremonially married in 1980. They have three children: a boy born in April 1977, a girl born in December 1979, and a girl born in June 1985. The dissolution decree placed the children in joint legal custody and in Janet's primary physical care. These custody provisions are not challenged in the present appeal.

The dissolution decree directed Dennis to pay Janet child support of \$450 per month. The decree provided that child support would continue at the same amount "until the youngest child becomes 18 years of age (or graduates from high school, if later), dies, marries or otherwise becomes emancipated." The decree made no provision for child support to decrease when fewer than three children remained eligible for support.

In a motion for enlargement and modification pursuant to Iowa Rule of Civil Procedure 179(b), Dennis asked that the decree be modified so that the child support award would diminish when fewer than three children were eligible for support. In denying this motion, the district court commented as follows:

[T]he Court has given serious consideration to the request that child support be reduced as the children reach their majority. However, considering the likelihood of inflation and that the amount awarded will no doubt have less purchasing power by the time the children reach majority, I consider the present provision to be equitable.

Dennis has now appealed the dissolution decree. He once again contends the decree should be modified so that the child support award would diminish when fewer than three children remained eligible for support. He does not challenge the amount of \$450 per month as long as all three children are eligible, but he argues that amount will be inequitable when only one or two of the children are eligible.

Our scope of 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, but we are not bound by them. Iowa R. App. P. 14(f)(7).

It is well established that parents have a legal obligation to support their children. In re Marriage of Campbell, 451 N.W.2d 192, 194 (Iowa App. 1989). The obligation should be apportioned according to each party's ability to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). The factors to consider are: (1) the financial resources of the child; (2) the standard of living the child would have enjoyed had there not been a dissolution; (3) the cost of day care; (4) the physical and emotional needs of the child; and (5) the child's educational needs. Iowa Code § 528.21(4).

Child support awards and related provisions may be subsequently modified when there is a substantial change in circumstances, such change being permanent or continuous, and not temporary. In re Marriage of Mueller, 400 N.W.2d

86, 88 (Iowa App. 1986). An award entered in a final decree is not to be regarded as a variable sum to be adjusted either upward or downward with each fluctuation change in the respective conditions of the parties. Mears v. Mears, 213 N.W.2d 511, 514 (Iowa 1973).

In In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975), the Iowa Supreme Court, interpreting Iowa Code section 528.1(2), held that "[i]t is clear the legislature intended that support terminate at eighteen except when the statute specifically provides otherwise." The exceptions to section 528.1(2) are concerned with child support for children if they decide to attend an institution of higher learning, which is not being contested on this appeal. It is therefore apparent that unless the exceptions to section 528.1(2) are activated, child support in the present case must be decreased as each child reaches the age of eighteen.

Janet argues that the trial court need not reduce proportionately the child support as each child reaches the age of majority, and cites to In re Marriage of Pfeffer, 443 N.W.2d 92, 95 (Iowa App. 1989) and In re Marriage of Briggs, 225 N.W.2d 911, 914 (Iowa 1975). However, we find that in both of these cases the trial court ordered child support to be reduced as each child reached the age of eighteen, subject only to the exceptions provided in section 528.1(2). While we have recognized that inflation plays an important role in determining the proper amount of

child support under the circumstances, we have also been cautious in ordering support on a financial foundation that is speculative on future economic calculations. See Pfeffer, 443 N.W.2d at 95. Though the trial court in the present case notes that inflation will erode Janet's purchasing power, we do not find any evidence in the record justifying the continuation of the support at \$450 per month even though several of the children covered under the original decree have reached the age of eighteen. Nor does Janet cite to any evidence that future inflation will be such as to require the continuation of child support at the current level even though one or several of the children have reached the age of majority. It is inappropriate for courts to take judicial notice of future inflation. In re Marriage of Mentel, 359 N.W.2d 505, 507 (Iowa App. 1984).

We therefore hold that the child support award of \$450 per month shall be modified such that said award shall be reduced as each child reaches the age of eighteen (or graduates from high school, if later), dies, marries or otherwise becomes emancipated, unless any such child decides to pursue a course of higher education, at which time child support shall continue until the child reaches the age of twenty-two. Mentel, 359 N.W.2d at 507. As for the amount of child support to be paid when such circumstances occur, we note that the Iowa Supreme Court, pursuant to an order dated October 16, 1990, adopted permanent child support guidelines. We therefore remand

the case to the district court to determine whether the child support guidelines should be implemented, and if so, by what amount should child support be reduced as each child becomes ineligible. Pending such determination, child support shall continue at the rate set by the trial court's decree.

Costs are taxed half to each party.

AFFIRMED AS MODIFIED AND REMANDED.