

CLERK SUPREME COURT

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4-374
84-205

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

Petitioner-wife appeals from the order modifying the child support provisions of the dissolution decree, claiming that the trial court erred in setting the amount of child support; in failing to make the change retroactive to the date of her application for modification; and in failing to allow attorney fees for the modification proceeding.

The 1983 decree dissolving this marriage ordered respondent to pay to petitioner \$230 per month child support for the parties' two minor children. At the time of the decree, respondent was unemployed, but was receiving unemployment compensation. The decree provided that if respondent became employed, his employment would be deemed a change in circumstances. One week after the trial of the dissolution proceeding was held, respondent obtained employment and petitioner filed her application for modification asking that the amount of child support be increased.

Upon trial the court increased the child support obligation to \$360 per month, with the first increased payment being due following the modification order. Petitioner moved, under rule 179(b), Iowa Rules of Civil Procedure, that the court amend its conclusions to provide that the increased child support obligation be made retroactive to the date she filed the application for modification. That motion was denied.

On our de novo review, we believe the court correctly found that there had been a substantial change in circumstances, justifying modification of the child support provisions. We affirm the increase of child support to \$360 per month, and affirm the effective date of the increase.

We believe that respondent should furnish medical health coverage for the two children, at least as long as such coverage is provided by his employment. Should such coverage be unavailable through his employment in the future, further consideration can be given to its provision at that time. Respondent is in a better position to furnish such health coverage than is petitioner.

At the time of trial on this application for modification, it was the established law of Iowa that attorney fees were not allowable to the prevailing party in a modification action. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1978). By the adoption of House File 2373, Acts of the 70th General Assembly, section 598.36 was added to the law pertaining to dissolution matters, as follows:

598.36 ATTORNEY FEES IN PROCEEDING TO MODIFY ORDER OR DECREE. In a proceeding for the modification of an order or decree under this chapter the court may award attorney fees to the prevailing party in an amount deemed reasonable by the court.

Iowa Code § 598.36, 1984 Iowa Legis. Serv. No. 4 at 201 (West). In In re Marriage of Krug, ____ N.W.2d ____, No. 4-228 slip op. at 6, (Iowa Ct. App. 1984)(en banc), we stated:

We believe the change in the law could not have been anticipated and that equity requires we leave the parties as they expected to be at trial. We decline to award trial court attorney fees to the petitioner but award appellate attorney fees

To the extent that we have modified the trial court's order by requiring respondent to maintain health insurance for the minor children, petitioner is the prevailing party. Accordingly, we award her fees on this appeal in the amount of \$500. In setting this amount, we do not suggest this is the proper charge for representation in this appeal, we only determine respondent's contribution. The costs of this appeal are taxed to respondent.

AFFIRMED AS MODIFIED.