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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-435 / 92-1812

IN RE THE MARRIAGE OF JULIE L. MADSEN and TIMOTHY I. MADSEN

Upon the Petition of
JULIE L. MADSEN, n/k/a JULIE L. JENSEN,

Appellee,

And Concerning
TIMOTHY I. MADSEN,

Appellant.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Timothy Madsen appeals the district court's modification of the child support provision of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

R. Patrick Eich of Eich Law Firm, P.C., Carroll, for appellant.

Stephen D. Lombardi of Lombardi Law Firm, Des Moines, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

Julie and Timothy Madsen were previously married to each other and were divorced on December 27, 1989. By the terms of the dissolution decree, they were granted joint legal custody of their child, Travis, born on October 2, 1980, with Julie having primary physical care. Timothy was ordered to pay child support of $200 per month, maintain health insurance for Travis, and pay one-half of the medical expenses not covered by insurance.

Timothy appealed. The dissolution decree was affirmed in an unpublished decision by the Iowa Court of Appeals. In re Marriage of Madsen, 471 N.W.2d 82 (Iowa App. 1990) (Table).

On April 7, 1992, Julie filed an application to modify the child support provision of the dissolution decree. She asked that Timothy's child support obligation be increased to $375 per month. She stated she would maintain health insurance for Travis and asked to have Timothy responsible for all medical costs not covered by insurance.

At the time of the dissolution decree, Julie was employed as a legal secretary by the Lombardi Law Firm and had net monthly income of $1,030. Timothy was employed by West Central Coop in Audubon, where he had net monthly income of $1,093.

In July 1990 Travis underwent an adenoidectomy. The insurance carrier determined Travis's condition was preexisting and did not provide coverage. Travis has

incurred other medical and dental expenses not covered by insurance. Julie paid her one-half of the expenses. In May 1991 Timothy filed a petition in bankruptcy, seeking to discharge his portion of the medical expenses, as well as court costs and attorney fees he had been ordered to pay in the dissolution decree. The bankruptcy court determined the debts were not dischargeable.

Both parties have remarried. Julie married Craig Jensen in March 1990, and she is now known as Julie Jensen. They had a child, Turner, in January 1992. Timothy married in March 1992. His current wife has a child from a previous relationship who lives in their household.

Julie is still employed as a legal secretary. In 1992 her net monthly income was $1,026. When Turner was born, she obtained a family health insurance policy through her employer. She added Travis to her insurance because under the family policy there is no additional charge for additional children. Timothy also has the same job he did at the time of the dissolution decree. In 1992 his net monthly income was $1,468.

The district court determined there had been a substantial change in circumstances under Iowa Code section 598.21(9), which provides:

> Notwithstanding subsection 8, a substantial change of circumstances exists when the court order for child support deviates by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4.

The court examined the parties' net monthly incomes and determined:

> The guidelines would require a monthly support obligation of $330.25, but the facts of this case require the Court to deviate from the guidelines. The respondent shall be ordered to pay $375 per month as child support to the Petitioner.

The court modified the decree to order Julie to maintain health insurance for Travis. The obligation to maintain dental insurance remained with Timothy. The court did not modify the provision of the decree which ordered each party to pay one-half of medical expenses not covered by insurance. Timothy was ordered to pay $746.35 in unpaid medical expenses. He was also ordered to pay $500 for Julie's trial attorney fees. Timothy appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Timothy contends the district court erred by finding there had been a substantial change in circumstances. He states his income has increased only $3,852 since the dissolution decree was filed, and that this increase is not substantial enough to warrant a modification.

The supreme court has ruled section 598.21(9), which became effective July 1, 1992, should be applied to all cases heard after that date. Schuler v. Rodberg, No.

92-1948 (Iowa May 25, 1994). The present action was heard on October 1, 1992, and decided on October 12, 1992. Thus, section 598.21(9) may be applied to this case.

Under the child support guidelines, Timothy's child support obligation for Travis is $330. This amount deviates by more than ten percent from the amount he was required to pay under the dissolution decree. We conclude that under section 598.21(9), there has been a substantial change in circumstances.

Timothy also contends the district court should not have deviated from the child support guidelines by ordering him to pay $375 per month in child support instead of $330.

There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). A court may not vary the amount of the child support without a written finding that the guidelines would be unjust or inappropriate. In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

In our de novo review of the record, we find no sufficient reason to depart from the child support guidelines. While Julie has assumed the maintenance of health insurance for Travis, she has assumed no additional cost for doing so. We conclude application of the guidelines would be neither unjust nor inappropriate. We

therefore determine Timothy should pay the amount prescribed by the child support guidelines, which is $330 per month.

Timothy claims the district court abused its discretion in ordering him to pay $500 towards Julie's trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show the trial court abused its discretion. Id. We find no abuse of discretion here.

Julie asks for appellate attorney fees of $1,500. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We determine each party should pay his or her own attorney fees for this appeal.

We affirm the decision of the district court modifying the parties' dissolution decree, except we determine Timothy should pay child support of $330 per month. Costs of this appeal are assessed to Timothy.

AFFIRMED AS MODIFIED.