IN THE COURT OF APPEALS OF IOWA

FILED
DEC 13 '999
CLERK SUPREME COURT

No. 1999-315 (9-568) / 98-1091
Filed December 13, 1999

IN RE THE MARRIAGE OF MAJA ELISABETH RATER and OTHO LEONARD RATER

Upon the Petition of
MAJA ELISABETH RATER,
Petitioner-Appellee,

And Concerning
OTHO LEONARD RATER,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Otho Rater appeals a district court ruling modifying the child support provisions of the parties' original dissolution decree. **AFFIRMED.**

David A. Morse of Garten & Wanek, Des Moines, for appellant.

Thomas E. Leahy of Legal Services Corp. of Iowa, Des Moines, for appellee.

Considered by Streit, P.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Otho Rater appeals a district court ruling modifying the child support provisions of the parties' original dissolution decree. We affirm.

Background facts. Otho and Maja Rater were married in 1964 and divorced in 1987. The original dissolution decree granted Maja primary physical care of the four children who were then minors and ordered Otho to pay $850 per month in child support. In May of 1992, the decree was modified to provide that Otho would pay $816 per month for the three remaining minor children. At the time of the divorce and modification, Otho was an assistant professor at Grandview College earning approximately $32,000 per year. Otho ran the computer lab and provided computer programming for the college. However, Rater's employment at Grandview ended at the conclusion of the 1992 school year. In a previous action this court upheld a district court's finding that Otho's loss of employment was voluntary. *See In re Marriage of Rater*, No. 92-0940 (Iowa App. Dec. 29, 1993).

In November of 1993, Otho was found guilty of contempt on ten counts for failing to comply with the child support orders. Following a writ of certiorari, the contempt finding was upheld on appeal. *See Rater v. Iowa Dist. Ct.*, 548 N.W.2d 588, 591 (Iowa App. 1996). In November of 1995, Otho was convicted by a jury of fourteen counts of criminal non-support. Our supreme court reversed and remanded these convictions for further proceedings because a valid waiver of Otho's Sixth Amendment right to counsel did not occur. *See State v. Rater*, 568 N.W.2d 655, 663

(Iowa 1997). On retrial, Rater was again convicted of fourteen counts of criminal non-support.[1]

On January 21, 1997, Otho filed a petition to modify seeking a reduction of his child support obligation. The district court rejected Otho's request that child support be set based upon his current income rather than his 1993 income, but determined that a modification was warranted due to the fact that only two of the children were now minors. The court reduced Otho's child support obligation to $671.80 per month and Otho now appeals.

Scope of review. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa App. 1998). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Self-infliction rule. Iowa case law supports the proposition that in the determination or modification of child support, a party may not claim inability to pay child support when that inability is self-inflicted or voluntary. *See In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993) (citations omitted). The self-infliction rule prevents parents from gaining an advantage by voluntarily or recklessly reducing their

[1] Rater's appeal of these convictions was dismissed by our supreme court for want of prosecution on December 21, 1998. *See* Iowa R. App. P. 19(a). We further note that Otho was found guilty of an additional count of contempt in April of 1997.

earning capacity with the intent to deprive their children of support. *See, e.g., In re Marriage of Walters*, 575 N.W.2d 739, 743 (Iowa 1998); *In re Marriage of Swan*, 526 N.W.2d 320, 324 (Iowa 1995); *Foley*, 501 N.W.2d at 500.

While Otho still disputes the finding that his reduction in income was self-inflicted, he nonetheless contends that the district court should have used his actual net monthly income rather than his 1993 income for purposes of calculating child support. Otho asserts that his current monthly obligation of $671.80 amounts to an unrealistic and insurmountable burden and should be reduced pursuant to the supreme court's holding in *In re Marriage of Walters*, 575 N.W.2d 739 (Iowa 1998). In *Walters*, the child support obligor suffered a reduction in income due to his incarceration for embezzlement. *See Walters*, 575 N.W.2d at 740. Our supreme court held that although the obligor's reduction in income was the result of voluntary criminal activity, he had not acted with the intent to deprive his children of support. *Id.* at 743 (citing *Swan*, 526 N.W.2d at 323-24). Due to the obligor's extremely limited earning opportunities, the court determined that some consideration of the obligor's earning capacity and ability to pay was necessary in setting his child support obligation. *See id.*

In contrast to *Walters*, the record before us reveals that Otho has consistently tried to evade his child support responsibilities over the past seven years. Since leaving Grandview in 1993, he has mainly worked at temporary jobs and has been financially supported by his live-in girlfriend. The district court specifically found

that Otho has not sought employment in his field of expertise and has chosen to apply for lesser-skilled jobs. The court also found that Otho has purposely sabotaged his job search by informing potential employers of his status as convicted felon and otherwise discouraging them from hiring him. We would also note that Otho's testimony as to his current earnings was inconsistent with the financial worksheets he submitted to the court.

Otho was fifty-five years old at the time of trial and in good health. He is clearly able to pursue full-time employment. We defer to the court's credibility findings and find that Otho's current child support obligation does not amount to an insurmountable burden.

Having considered all issues properly before us on appeal, we hereby affirm the order of the district court.

AFFIRMED.