FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-062 / 93-682

IN RE THE MARRIAGE OF DENNIS EUGENE WENDT AND PATRICIA JANE WENDT

Upon the Petition of
DENNIS EUGENE WENDT,

Appellant,

And Concerning
PATRICIA JANE WENDT,

Appellee.

Appeal from the Iowa District Court for Story County, Gary L. McMinimee, Judge.

The husband appeals the order granting the wife's application to modify the parties' dissolution decree. **AFFIRMED.**

Gordon K. Darling, Jr. of Darling & Darling, Winterset, for appellant.

John L. McKinney, Ames, for appellee.

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

DONIELSON, C.J.

Dennis and Patricia Wendt were married in 1969 and divorced in 1982. The dissolution decree gave Patricia primary physical care of the parties' two children, Jason and Nicole. Dennis was ordered to pay child support until each child reached the age of eighteen or graduated from high school. The decree deferred the issue of financial responsibility for the expenses of the children's higher education until a later time.

After Jason graduated from high school, he took classes at Des Moines Area Community College (DMACC). On November 1, 1989, the district court entered an order requiring Dennis to contribute to Jason's educational expenses. Jason has completed his education and is self-supporting. He lives with Patricia and pays her $100 per month for room and board.

On July 23, 1992, Patricia filed an application for modification of the decree. Nicole graduated from high school in May 1992 and enrolled at DMACC in an office technology program. She expected it would take her five semesters to graduate. Nicole also works part-time at a bank and earns about $5,000 annually. Nicole lives with Patricia in Ames and commutes to school in Ankeny.

At the time of the dissolution, Dennis earned about $45,000 working as a manager of a Dahl's Store in Des Moines. At the time of the modification he was the manager

of a Dahl's in Kansas City, Missouri, where he earned about $73,437.

At the time of the dissolution, Patricia was unemployed, but planned to seek work. She is currently employed at American Packing in Story City. In 1992, she earned $20,763, which included overtime. She estimated her total monthly expenses were $1,539.

The district court determined Nicole had educational expenses of $11,000 per year. This included expenses for books, clothes, tuition, noon meals, groceries, room, car payment, car insurance, gas, and car repairs. The court found Nicole was able to contribute $5,000 towards her expenses. The court concluded the remaining $6,000 should be contributed by the parties in approximately the same relative proportions as their gross incomes, or 20% by Patricia and 80% by Dennis. The court also concluded that considering the support in the form of room and board that Patricia provides, Dennis should pay $290 per month to Patricia and $110 per month to Nicole. The support was made retroactive to August 1, 1992.

Dennis appealed. He agrees he should pay some amount for Nicole's educational expenses, and acquiesces to the requirement that he pay Nicole $110 per month. However, he contends the district court's award is excessive because it includes items not directly related to Nicole's education, such as clothes, car payments, car insurance, and car repair. He asks us to eliminate his obligation to pay

Patricia $290 per month to reimburse her for Nicole's room and board.

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).

Iowa Code section 598.1(2) authorizes the court, in its discretion, to award support of children through college under the proper circumstances. In re Marriage of Richards, 439 N.W.2d 876, 879 (Iowa App. 1989). A court should consider: (1) the ability of the child for college; (2) the age of the child; (3) the financial conditions of the parents; and (4) whether the child is self-sustaining. In re Marriage of Lindberg, 462 N.W.2d 698, 702 (Iowa App. 1990). Once it is determined support for college is justified, it is equitable for parents to provide for their children's higher education as their financial condition will permit. In re Marriage of Lieberman, 426 N.W.2d 683, 685 (Iowa App. 1988). What is reasonable must be determined by examining the parents' financial resources and the child's educational needs. Id.

In the present case, Nicole lives with Patricia while attending DMACC, and so her educational costs must include reimbursement to Patricia for Nicole's room and board. The district court considered Patricia's statement of her

monthly expenses and allocated a portion each to Patricia, Jason, and Nicole. We conclude the district court's estimate of Nicole's expenses was reasonable. Furthermore, the evidence shows Dennis has the financial resources to provide for Nicole's higher education.

We affirm the district court decision ordering Dennis to contribute to Nicole's educational expenses by paying $110 per month to Nicole and $290 per month to Patricia.

Patricia seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We order Dennis to pay $500 towards Patricia's appellate attorney fees. Costs of this appeal are assessed to Dennis.

AFFIRMED.