FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 7-590 / 96-1982

IN RE THE MARRIAGE OF ROBERT J. TODD AND JUSTINE D. TODD

000319

Upon the Petition of
ROBERT J. TODD,
Appellee,

And Concerning
JUSTINE D. TODD,
Appellant.

Appeal from the Iowa District Court for Des Moines County, John G. Lynn, Judge.

Justine Todd appeals a modification action concerning the parties' dissolution decree. **AFFIRMED IN PART AND MODIFIED IN PART.**

Andrew B. Prosser of Tom Riley Law Firm, P.L.C., Burlington, for appellant.

Robert J. Todd, Gosport, Indiana, pro se.

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

VOGEL, J.

Justine Todd sought to modify a 1990 decree of dissolution. The parties have two children, Robert G. and Mary. Justine asked the court to enter judgment for arrearages in child support and unpaid medical support. She also claimed a substantial change in circumstances, justifying modification of Robert Todd's child support obligation, since Robert G. was eighteen years old and accepted for admission to college.

At the hearing, Justine asked the court to enter judgment for arrearages in alimony. Robert did not attend the hearing. The 1990 decree specifically provided that the alimony and child support ordered would not become judgments as they became due. Prior to the court's ruling, Robert filed a financial affidavit and accompanying sworn statements. He included a request "that the Court do what is fair and equitable with respect to back due and owing child support and alimony. . . ." Justine then filed a response to Robert's affidavit, reasserting her request for a judgment on the alimony arrearages and moving to amend to conform to the evidence.

The court's ruling entered judgment for past child support and medical expenses. It refused to enter judgment on alimony. The ruling also contained a lengthy hypothetical calculation of college support, but then continued child support as ordered in the decree for both children, simply stating that "the child support for [the son in college] shall continue under the provisions of Section 598.1(6)." The

court concluded no substantial change in circumstances existed because its calculation of child support did not vary by more than ten percent from the amount ordered in the decree.

The court denied Justine's 179(b) motion as to a judgment on alimony and as to its conclusion no substantial change in circumstances existed. Justine appeals. We affirm in part and modify in part.

Our review is *de novo*. Iowa R. App. P. 4. We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Fox*, 559 N.W.2d 26, 28 (Iowa 1997).

Justine first asserts the district court erred in not entering judgment on delinquent alimony. Although Justine did not plead this issue specifically in her petition for modification, she offered evidence at the hearing, and moved to amend the pleadings to conform to the evidence. Robert's post-trial affidavit stated that some alimony had been paid, then requested the court do what is fair and equitable with respect to back alimony, if any. We conclude the trial court did not abuse its discretion in declining to rule on the past due alimony as the issue was not properly raised in the pleadings. Robert's effort to include evidence in a post-trial affidavit convinces us that the issue cannot be fairly addressed in this piece-meal fashion.

Next, Justine argues the trial court erred in refusing to modify Robert's child support obligation. The decree of dissolution provides for Robert to pay $100 weekly

for each child up to age eighteen, with continuing support under Iowa Code section 598.1 for any child attending college, up to age twenty-two.[1] The district court calculated the support due for one child and the college support due for the other child. It then determined the sum of those two amounts did not vary by more than ten percent from the decretal amount and refused to modify the decree.

Iowa Code section 598.21(8) sets forth the factors to consider to determine whether or not a substantial change in circumstances exists which warrants modifying a support order. Section 598.21(9) declares a substantial change in circumstances exists when the existing support order and support calculated under the most current child support guidelines varies by ten percent or more. Although the combined child support and college support as calculated by the trial court does not vary by more than ten percent from the existing support order, the evidence reveals other changes in circumstances warranting modification. Both Robert and Justine have had changes in their employment and income. Their son had been accepted at the University of Iowa. Robert has remarried. Both parties have moved since their dissolution. We find a substantial change in circumstances justifying a modification of the child support order. In addition, effective July 1, 1997, the statutory provisions concerning college support have changed.

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[1] The district court found Robert had paid total child support of $54,100, but still had an arrearage of $12,500 as of August 9, 1996.

In the trial court's order, it found Robert's gross annual income to be $56,800. Justine's child support worksheet reveals her gross annual income to be $40,077. Application of the current child support guidelines sets Robert's child support obligation for Mary, still living at home, at $575 monthly. We modify accordingly, effective August 1, 1996.

The trial court continued the support order for Robert G. at $100 per week. He had been accepted at the University of Iowa. The evidence supports annual costs for tuition, room, and board at the University of Iowa of $6,678 for the 1996-1997 school year. We agree with the trial court that Robert G. is capable of earing $1,000 during the summer thereby contributing to his college expenses. Of the remaining college costs and based on the ratio of Justine's and Robert's net incomes, we find Robert's share is 61%, which totals $3463 for the 1996-97 academic year. We modify accordingly.

Effective July 1, 1997, the legislature amended the college support provisions of chapter 598. The maximum fraction of college costs the court can allocate to a parent now is one-third. We conclude all college support amounts accruing after July 1, 1997, must be limited to no more than one-third of the costs for tuition, room and board, and books as determined for each successive school year by the cost figures provided by the school. Such support amounts are payable directly to the school or to the student, not the other party. We therefore affirm the trial court's order

for college support as modified and order Robert to pay one-third of the college costs as determined above.

AFFIRMED IN PART AND MODIFIED IN PART.