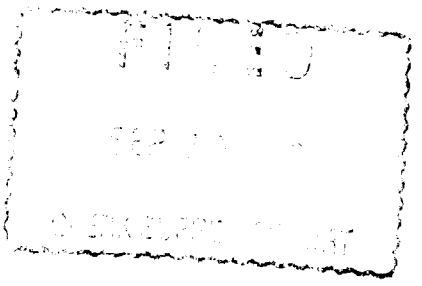
IN THE COURT OF APPEALS OF IOWA

No. 8-115 / 97-1350

IN RE THE MARRIAGE OF VICKI R. HAMBLIN AND JEFFREY L. HAMBLIN

Upon the Petition of
VICKI R. HAMBLIN,
Appellant,

And Concerning
JEFFREY L. HAMBLIN,
Appellee.



Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

The petitioner appeals a district court ruling denying her motion to quash a mandatory income withholding order and refusing to deem one son emancipated.

AFFIRMED.

Robert M. Fassler, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant Attorney General, Michael J. Parker, Assistant Attorney General, and Michael E. Wallace, Assistant County Attorney, for appellee State.

Stephen A. Stefani of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellee Jeffrey Hamblin.

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

VOGEL, J.

Vicki Hamblin appeals a district court ruling denying her motion to quash a mandatory income withholding order. We find the district court correctly calculated Vicki's obligation from prior offsets when each party had primary care of one of the children. We further find the trial court was correct in refusing to deem one son emancipated because he had moved in with his girlfriend and her mother.

Background facts. Jeffrey and Vicki Hamblin's marriage was dissolved by decree on April 6, 1983. Vicki was granted physical care of the parties' two minor children, Richard, born February 7, 1979, and Andrew, born August 1, 1980. Jeffrey was ordered to pay $40 per week in child support.

In May of 1991, the decree was modified by stipulation of the parties to provide that Richard would reside temporarily with Jeffrey, and that during this time neither party would owe support to the other for Richard. The stipulation further provided that Jeffrey pay $50 per week in child support for Andrew.

In June of 1994, the parties entered into another stipulation and modification in which Jeffrey received primary care of Richard. After calculating their support obligations based on financial affidavits, the parties agreed in their stipulation that when Vicki's support obligation for Richard was offset against Jeffrey's support obligation for Andrew, the result was that Jeffrey would pay Vicki $50 per week for Andrew's support.

Finally, in July of 1995, the parties entered into another stipulation and modification in which Jeffrey received primary care of Andrew. The stipulation provided that Jeffrey's child support obligations would cease and that Vicki would be required to pay $40 per week for support of Andrew. The stipulation further provided that: "This child support would be in addition to any other child support the Petitioner [Vicki] may be paying for the parties' other children."

Vicki became delinquent in her child support payments, and in January 1996 the Child Support Recovery Unit prepared an order for mandatory income withholding from Vicki in the amount of $328.95 per month for current support and an additional $164.48 to apply to an alleged arrearage in the amount of $2,604.96.

Vicki filed a challenge to the income withholding order in April 1997, asserting that both the current support and arrearage amounts were incorrect. Vicki also requested that the court declare Andrew emancipated due to the fact he no longer resided with Jeffrey.

At the hearing on Vicki's challenge to her income withholding, the parties debated whether the income withholding order accurately implemented the judgment for child support entered by the district court as a result of the modifications in 1994 and 1995. The State argued that the language in the July 1995 stipulation requiring Vicki to pay $40 per week "in addition to any other child support the Petitioner may

be paying for the parties' other children" constituted a valid and enforceable judgment against Vicki in an amount greater than the $40 per week amount.

Following the hearing, the district court concluded that the 1994 modification was approved with support amounts consistent with the terms of the supreme court uniform child support guidelines. After determining that the stipulations did not express an intent to deviate from the guidelines, the court concluded that Vicki's obligation under the guidelines was actually $307.80 per month and ordered that the arrearage be recalculated using that amount. The court further ruled that Andrew was not emancipated.

The State and Vicki both filed rule 179(b) motions. In ruling on the State's motion, the court found that when Vicki's support obligation for Richard ended, her remaining obligation for Andrew should be modified to $230.85 per month, consistent with the guidelines. The court further denied Vicki's 179(b) motion. Vicki appeals.

Scope of review. We review cases involving child support obligations de novo. Iowa R. App. P. 4; *State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 695 (Iowa 1993). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

Child support. Vicki contends the district court erred in calculating her child support obligation and effectively modified her support obligation. Vicki maintains

there is no valid and enforceable judgment against her for child support because the court's June 1995 order was never properly recorded as a separate order. She asserts that the only enforceable judgment is the one in the July 1995 stipulation of $40 per week for Andrew's support.

As the trial court noted, Vicki's complaint was actually a motion to quash a mandatory income withholding order. As such, the court properly reviewed the amount of the withholding order and the status of the child support obligations according to the filed modifications.

A dissolution of marriage decree is susceptible to interpretation on the same basis as other instruments, the determinative factor being the intent of the dissolution court as gathered from the language of the decree and the context in which it was rendered. *Sieren v. Bauman*, 436 N.W.2d 43, 46 (Iowa 1989) (citing *Bowman v. Bennett*, 250 N.W.2d 47, 50 (Iowa 1977)). In determining the court's intent, we should look not to the court's conclusion about the parties' intent when entering into the stipulation, but to the document as it expresses the court's intent. *See In re Marriage of Sylvester*, 412 N.W.2d 624, 627 (Iowa 1987).

While it would have been helpful to have the separate support obligations set out in the modifications along with the net support or offset, a later court can infer what the separate obligations were from the offset. *See Bowman,* 250 N.W.2d at 50 (proper effect to be given to the stipulations and modifications must be that which is

clearly implied as well as that which is expressed). In this instance, the district court worked backwards from the offset amount to determine that the offset was calculated using the child support guidelines. The court then correctly determined that Vicki's child support obligation should have been calculated at $307.80 per month upon the July 1995 modification. Contrary to Vicki's contentions, the court did not modify Vicki's support obligations. Rather, the court deduced the figures utilized, although not specified, by previous courts and then used those figures to review the mandatory income withholding order. We further agree that the language in the July 1995 stipulation did not express an intent to deviate from the guidelines and allow Vicki to pay only for Andrew's support and not for Richard's. We therefore affirm the district court's ruling and denial of Vicki's 179(b) motion.

Andrew's emancipation. Vicki further argues the district court erred in concluding Andrew was not emancipated. She asserts that Andrew moved nearly everything out of the family home and now resides with his girlfriend and her mother. She further asserts that Andrew works approximately thirty hours per week, pays for much of his own food and clothing, and testified at the hearing that he did not want to return to his father's home.

"Emancipation is not to be presumed. Whether a child has been emancipated must be determined largely on the particular facts and circumstances in each case. Ordinarily it is a question for the factfinder." *Vaupel v. Bellach*, 261 Iowa 376, 380,

154 N.W.2d 149, 151 (1967) (citations omitted). The fact alone that a child is outside the home expending his own money does not demonstrate emancipation. *Id.* Emancipation is not necessarily a continuing status, even if once established, it may be terminated at any time during the child's minority. *Id.*

We find the trial court correctly determined that Andrew was not emancipated. Jeffrey continues to pay for Andrew's car and health insurance and offers Andrew a room in the family home whenever he wants it. Jeffrey also recently bought Andrew a pair of eyeglasses. Andrew is a full-time high school student and while he has a part-time job, it does not cover all of his expenses. We note that Andrew testified that his maternal grandparents showed him paperwork with regard to the withholding orders and that part of his motivation in moving out was to ease the support burden of his mother. However, moving to his girlfriend's mother's home does not adequately demonstrate Andrew's emancipation. The uncertainty of Andrew's current living situation is also a factor.

Having carefully considered all arguments before us on appeal, we affirm the district court.

AFFIRMED.

Huitink, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. The question we address is whether the trial court was correct in 1997 in entering a money judgment for child support based on a 1995 modification order. The 1995 order specifically provided for $40 per week support. This part of the order is not challenged.

Vicki, however, challenges the trial court's computation of additional child support by calculating in 1997 child support to have accrued as a judgment beginning in 1995.

The basis for the trial court computing that support was the following language: "[I]n addition to any other child support Petitioner *may* be paying for the parties' other children." (Emphasis added.) I do not find this language to justify entering a retroactive money judgment.