IN THE COURT OF APPEALS OF IOWA

No. 4-583 / 94-0222

FILED
JAN 23 1995
CLERK SUPREME COURT

IN RE THE MARRIAGE OF MARY JO MEYER AND KENNETH L. MEYER

Upon the Petition of
MARY JO FOSTER,

Petitioner-Appellant,

And Concerning
KENNETH L. MEYER,

Respondent-Appellee.

Appeal from the Iowa District Court for Sac County, Ronald H. Schechtman, Judge.

Mary Jo Foster appeals, and Kenneth Meyer cross-appeals, from a modification of the parties' dissolution decree. **AFFIRMED.**

Colin J. McCullough of McCullough Law Firm, Sac City, for appellant.

Bruce Becker of Vest, Becker & Murray, Sac City, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ. Habhab, J., takes no part.

SACKETT, J.

Petitioner-appellant Mary Jo Foster appeals and respondent-appellee Kenneth L. Meyer cross-appeals from an order modifying Mary's child support obligation to require her to pay additional child support to Kenneth.

Mary contends the trial court was not correct in increasing her child support obligation from $75 a month to $477 a month. She contends her increase in income since the dissolution was within the contemplation of the trial court entering the original decree and the trial court should not have applied the child support guidelines. Mary also contends she should have been awarded trial attorney fees.

Kenneth, on cross-appeal, contends the increase in child support should have been made retroactive to the date he filed his petition to modify rather than from the date of the decree modifying. Mary and Kenneth both request appellate attorney fees. We affirm.

Kenneth's and Mary's fifteen-year marriage was dissolved in 1986. Physical care of the children born to the marriage, Kellie Jo, born July 28, 1977, and Brett Alan, born September 28, 1980, was awarded to Kenneth. At the time of the dissolution decree, Mary who had recently graduated as a registered nurse, was working part time at the Buena Vista County Hospital and had a net monthly income of $585. Mary changed jobs and her income substantially increased.

In August 1993, Kenneth filed a petition for modification seeking additional child support.

Kenneth is a farmer and has started a trucking business to supplement his income. The trial court found his income as reported for federal tax purposes in 1992 was $7200 and Kenneth anticipated he would have taxable income of about $18,500 in 1993. The trial court concluded Kenneth's monthly take-home pay was about $1250.

The trial court determined Mary had an annual income of $26,938 in 1992, and her present take-home pay was about $1875 monthly.

The trial court found Kenneth had shown the required change of circumstances and ordered Mary to pay child support in the amount of $477 a month. To compute this, the trial court considered Mary's net monthly income for purposes of applying the child support guidelines at $1875 less $300[1] that she paid in child care expenses for the child of she and her current husband and $25 a month individual medical expenses[2] and then added back $40 child care tax credit.

Mary does not challenge the computation of her net monthly income for child support purposes made by the trial

---

1. This deduction was not challenged by Kenneth on appeal. The entire child care expense was deducted from Mary's income for the purpose of applying the child support guidelines even though her current husband's income, who is the father of the child, is also employed outside the home at an annual salary of $23,432.

2. Kenneth pays the entire cost of health insurance for the children.

court nor does she challenge the computation of Kenneth's net monthly income for child support purposes. She contends Kenneth failed to meet the required burden to show a change of circumstances and application of the child support guidelines was unjust and inappropriate in this case.

Mary contends that provision made in the dissolution decree barred a modification and/or required Mary only be required to pay minimum child support for the children during their minority. The trial court disagreed, as do we.

Iowa Code section 598.21(9) (1993), provides as follows:

> 9. Notwithstanding subsection 8, a substantial change of circumstances exists when the court order for child support varies 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 amount of child support Mary would owe by applying the guidelines is in excess of a ten percent increase over what Mary is currently paying. Furthermore, Mary's income has increased more than seventy-five percent and Kenneth's income has realized only a minimal increase, if any, since the time of the dissolution. Inflation has eroded his income and the cost of the health insurance he is required to carry on the children has increased substantially. The

necessary change of circumstance has been shown both by applying the dictates of Iowa Code section 598.21(9) and because of the substantial increase in Jane's ability to contribute to the children's financial support.

Mary next argues the trial court failed to consider what she characterizes as a wrong or injustice to her in ordering the increase. See In re Marriage of Reedholm, 497 N.W.2d 477, 479 (Iowa App. 1993). We do not deny to increase Mary's child support obligations will require her to make some personal sacrifices for her children. This does not make imposition of the child support guidelines unjust. There is a rebuttable presumption the child support guidelines be applied. See In re Marriage of Bergfeld, 465 N.W.2d 865, 871 (Iowa 1991). The guidelines have been applied even when implementing them left the noncustodial parent at the poverty level. See In re Marriage of Staton, 511 N.W.2d 418 (Iowa 1993). Mary has failed to show an injustice in applying the child support guidelines. See State Dep't of Social Servs. ex rel. Welter v. Kitner, 512 N.W.2d 309, 312 (Iowa App. 1993). We affirm the trial court on this issue.

Kenneth, on cross-appeal, contends Mary be required to pay the increased support from the date of the filing of his petition to modify the child support. Kenneth requested in his petition child support be increased as of that date. The trial court has discretion to decide if child support payments begin from the date the petition to

modify is filed. See In re Marriage of Bonnette, 492 N.W.2d 717, 722 (Iowa App. 1992). We find no abuse of discretion.

We award Kenneth attorney fees of $500 on appeal. Costs on appeal are taxed to Mary. We award her no attorney fees.

AFFIRMED.