FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GRETA F. SMALL AND ARNOLD M. SMALL

399

Upon the Petition of	)	
GRETA F. SMALL,	)	Filed February 21, 1984
Petitioner-Appellee,	)	
And Concerning	)	
ARNOLD M. SMALL,	)	3-429 83-498
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Johnson County - Larry J. Conmey, Judge.

Respondent appeals from a district court order in this action for interpretation of the parties' dissolution decree as modified by a court of appeals decision. AFFIRMED IN PART; REVERSED IN PART.

Phillip A. Leff of Leff, Leff, Leff, Haupert & Traw, Iowa City, Iowa, for respondent-appellant.

Patrica C. Kamath of Kamath & Clark, Iowa City, Iowa, for petitioner-appellee.

Considered by Oxberger, C.J., and Snell and Schlegel, JJ.

PER CURIAM

Respondent, Arnold Small, appeals from a district court order in this action for interpretation of the parties' dissolution decree as modified by a court of appeals decision. Arnold asserts that when we modified the alimony provisions in our case of In re Marriage of Small, no. 2-66603 (Iowa Ct. App., Feb. 24, 1982), we did not increase petitioner's alimony for the time during which the parties' son, Brian, is in college.

The relevant terms of the original dissolution decree provides as follows:

> (4)
>
> IT IS FURTHER ORDERED that the respondent shall pay to the Clerk of this Court for the support of the minor child of the parties the sum of $200.00 per month commencing within five days of the date of filing their Decree, ... [i] n the event said son qualifies for support as defined in Section 598.1(2), the Code, when he is between the ages of eighteen and twenty-two, an appropriate order may be entered upon application and hearing.
>
> (5)
>
> IT IS FURTHER ORDERED that the respondent shall pay to the Clerk of this Court as alimony for the petitioner the sum of $100.00 per month as long as his obligation for support of the youngest child of the parties is in effect either under this Order or a subsequent order or agreement of the parties while said son is between the ages of eighteen and twenty-two; and upon termination of said support obligation, the monthly alimony installment shall be increased to a sum which equals 60% of the total of the support and alimony due for the month immediately preceding the termination of child support payments. . . .

The petitioner appealed the decision of the trial court alleging in part that she should have received more alimony and child support than provided in the decree. We held in relevant part as follows:

> . . . [t] he evidence does not support Greta's claim for an increase in child support or her claim for automatic increases in alimony. However, the evidence does indicate Greta should receive alimony of $300.00 per month until such time as child support for Brian terminates upon reaching the age of eighteen or his graduation from high school. (emphasis added)

Subsequently, the parties' son, Brian, chose to attend a four-year college. The parties entered into a stipulation providing that the petitioner, Greta Small, would be responsible for Brian's tuition and Arnold would be responsible for Brian's room and board while attending school. This stipulation was incorporated into the parties' dissolution decree on October 6, 1982, by order of the district court.

Respondent reduced the alimony payments to $100 per month following Brian's graduation from high school, asserting that our decision provided for $300 per month alimony only up to that date. Respondent further asserts that the alimony can only be increased under the formula in the original decree after he is no longer providing Brian support under the incorporated stipulation of the parties. Petitioner argues, and the district court found, that the formula increasing alimony was triggered by Brian reaching eighteen and completing high school. Any reduction, therefore, was inappropriate. Petitioner, in support of the district court's ruling, argues that the amount payable under the stipulation entered into by the parties is not child support. "Child support," however, is defined in Black's Law Dictionary, 217 (rev. 5th ed. 1979), as "[t] he legal obligation of parents to contribute to the economic maintenance; including education, of their children . . . ." The parties' stipulation to jointly provide education expenses for their son was incorporated into the dissolution decree. We, therefore, hold that any amounts paid in behalf of Brian under that decree is "child support."

The provision of our decree modifying alimony failed to specifically address the possibility of respondent's child support obligation continuing after Brian completed high school. However, our modification was intended to increase the level of alimony payable to $300 not just until Brian completed high school, but as long as respondent was responsible for child support. The formula provisions were intended by the trial court to provide relief to the respondent in meeting multiple obligations, not to excuse those obligations. We hold that under our modification, the level of alimony continues at $300 per month until the respondent is no longer

obligated by the parties' dissolution decree to pay child support either under the provisions of the original decree or any subsequent modification of that decree. Therefore, the district court was correct in holding that the amount of alimony due under the parties' dissolution decree as modified by us did not decrease when Brian finished high school.

The district court further held that "the Respondent's legal obligation to provide support for tthe minor child [Brian] terminated by the terms of the decree on June 15, 1982." The court then applied the formula in the original decree to establish the permanent level of alimony at $300 per month. We believe, however, that under the terms of the original dissolution decree, the determination of any possible increase in alimony is to be made only upon termination of the child support obligation under the subsequent order incorporating the parties' stipulation providing support for Brian while he attends college. Therefore, the trial court erred in applyng the formula under the decree using the month preceding June 15, 1982, to calculate the amount of permanent alimony. The formula in the original decree should be applied to the month immediately preceding either the date of Brian's successful completion of his course of study, the date Brian withdraws from a regular course of study or the date Brian reaches his twenty-second birthday, whichever arrives first. See Iowa Code § 598.1(2) (1983). Because none of these dates have arrived, we do not determine what the amount of permanent alimony, if any, in excess of $300 per month the respondent may become obligated to pay.[1]

Finally, we point out that, contrary to respondent's assertions, at no time is the level of alimony to be decreased under the formula in the original dissolution

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[1] The cost of room and board should be apportioned over a twelve month period to determine the level of child support per month.

decree. The decree provided that "the monthly alimony installment shall be increased to a sum . . ." determined under the formula. The decree does not provide for a decrease.

Accordingly, the level of alimony determined by the district court to be presently owing is affirmed, but the present determination of the amount per month of permanent alimony due petitioner is reversed. Costs of this appeal are taxed to the respondent.

AFFIRMED IN PART; REVERSED IN PART.