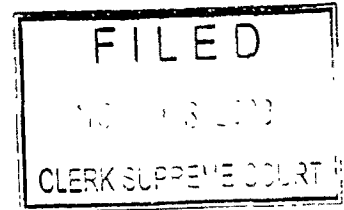


IN THE COURT OF APPEALS OF IOWA

No. 0-639 / 00-0169
Filed November 8, 2000

**IN RE THE MARRIAGE OF SHARON SUE STEFFES
AND ALDEN LAWRENCE STEFFES**

Upon the Petition of
SHARON SUE STEFFES,
Petitioner-Appellee,



And Concerning
ALDEN LAWRENCE STEFFES,
Respondent-Appellant.

Appeal from the Iowa District Court for Carroll County, William C. Ostlund,
Judge.

Alden Steffes appeals from a modification of a dissolution decree.

AFFIRMED IN PART; REVERSED IN PART.

Joseph L. Marks and Samuel Z. Marks of the Marks Law Firm, Des
Moines, for appellant.

James R. Van Dyke of Van Dyke & Werden, P.L.C., Carroll, for appellee.

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

MAHAN, J.

Alden Steffes appeals from a modification of a dissolution decree. He contends the district court erred in ordering (1) he pay a postsecondary education subsidy for the 1999-2000 school year for one of his children, and (2) the transfer of mutual funds not be credited against his contribution toward the postsecondary education subsidy for two of his children. We affirm in part and reverse in part.

A decree of dissolution was filed on September 26, 1997. There were four children born of the marriage: Joseph, born August 19, 1977; Scott, born June 10, 1979; Anthony, born January 17, 1983; and Jill, born August 19, 1992. The parties also entered into a stipulation on September 26, 1997, which provided as follows:

3. **CHILDREN'S ACCOUNTS.** Any accounts presently held in the name of the parties children are to continue to be held for the children. The accounts for each may not be transferred, liquidated, withdrawn from or in any way transferred before each reaches age eighteen (18) without the joint written consent of both Alden and Sharon Steffes. The accounts for each may not be transferred, liquidated, withdrawn from or in any way transferred after the age of eighteen (18) without the written consent of Sharon Steffes. It is the intention of both parties that any funds in the children's name are to be used for the children's education expense. In the event that the funds are not used for educational purposes, the funds are to become the property of the children upon their attaining the age of 22 years.
4. **POST-SECONDARY EDUCATIONAL EXPENSE.** The parties shall be responsible for postsecondary educational expense pursuant to the terms of [Iowa Code section 598.21(5A)].

Alden filed a petition to modify stipulation and decree of dissolution on March 22, 1999, asking the court to determine the amount, if any, of a

postsecondary education subsidy award for Joseph and Scott.¹ Sharon filed an answer and motion to consolidate. The court filed its findings of fact, conclusions of law and ruling on December 16, 1999. The court ordered Alden to contribute toward Joseph's postsecondary education in the amounts of \$2532 for the 1997-98 school year, \$2672 for the 1998-99 school year, and \$2786 for the 1999-2000 school year. Alden was also ordered to contribute toward Scott's postsecondary education. The court recognized Alden's contribution for the 1999-2000 school year might have to be prorated. The court stated, "The transfer of mutual funds shall not be credited against Alden's contribution." Alden appeals.

Standard of Review. Our review of modification proceedings is de novo. Iowa R. App. P. 4. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Holub*, 584 N.W.2d 731, 732 (Iowa App. 1998). We give weight to the trial court's fact findings, particularly when considering the credibility of witnesses, but we 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).

Joseph's Postsecondary Expenses for 1999-2000 School Year.

"Postsecondary education subsidy" is an amount which either of the parties may

¹ At the modification hearing, Alden contended Scott and Joseph should receive no postsecondary education subsidy because the children had repudiated him. See Iowa Code § 598.21(5A)(c) (1999). He contended any award to Joseph should be terminated because he failed to maintain a cumulative grade point average in the median range or above, pursuant to Iowa Code § 598.21(5A)(d). Alden also urged the court to deny the subsidy based on Iowa Code § 598.21(5A)(d), which requires the child to forward to each parent reports of grades awarded at the completion of each academic session. The district court rejected each of these arguments, and Alden does not raise them in his appeal.

be required to pay for educational expenses of a child who is between the ages of eighteen and twenty-two years. Iowa Code § 598.1(8) (1999). The court may order a postsecondary education subsidy if good cause is shown. Iowa Code § 598.21(5A).

Joseph attained the age of twenty-two on August 19, 1999, a few days prior to the beginning of the 1999-2000 school year. Thus, Alden contends the trial court erred in ordering him to pay toward Joseph's postsecondary education for the 1999-2000 school year. We agree.

The district court noted Joseph's age in its decision, and indicated the 1999-2000 subsidy "may have to be prorated." We take judicial notice of the fact the 1999-2000 school year began shortly after Joseph's twenty-second birthday. See *State v. Savage*, 288 N.W.2d 502, 506 (Iowa 1980) (appellate court took judicial notice of the limited market for the property stolen by defendant); *Wilson v. Bennett*, 252 Iowa 601, 602, 107 N.W.2d 435, 436 (1961) (appellate court took judicial notice of facts appearing in the court's record; denied petition for habeus corpus); *Howell v. Bennett*, 251 Iowa 1319, 1321, 103 N.W.2d 94, 96 (1960) (appellate court took judicial notice of its own records to show the failure of the trial court to fix the bond on appeal did not deprive petitioner of his right to appeal).

When a court acts without legal authority to do so, it lacks jurisdiction of the subject matter. *In re Adoption of Gardiner*, 287 N.W.2d 555, 559 (Iowa 1980) (portion of adoption decree granting a right of visitation to maternal grandparents had no legal effect because adoption court did not have authorization to grant

right of visitation to maternal grandparents). The court's jurisdiction of the subject matter may be raised at any time and is not waived even by consent. *Pierce v. Pierce*, 287 N.W.2d 879, 881-82 (Iowa 1980). The effect of action taken by a court without jurisdiction of the subject matter is that the action is void. *Gardiner*, 287 N.W.2d at 559.

The trial court did not have legal authority to order Alden pay for the postsecondary education of Joseph after he attained the age of twenty-two. Therefore, the trial court lacked subject matter jurisdiction over this issue, and its action is void. We reverse that portion of the district court's order requiring Alden pay \$2786 for Joseph's postsecondary education for the 1999-2000 school year.

Transfer of Mutual Funds. In a dissolution of marriage proceeding, the trial court may set aside a portion of the child support which either party is ordered to pay in a separate fund for the support, education, and welfare of the child. Iowa Code § 598.21(5). At dissolution, Alden and Sharon entered into a court-approved stipulation, agreeing to set aside certain funds for the children.

Alden contends the accounts were established for the children using his money, and the parties intended these funds be used for the children's educational expenses. He argues the court's order he could not make use of the funds reserved for education is inconsistent with the terms of the parties' initial stipulation. We disagree.

The language of the stipulation indicates the accounts became the property of the children with the parents acting as custodians until the eighteenth birthday of each child. After the children turned eighteen, the property still

belonged to the children but could only be withdrawn on Sharon's signature. The stipulation does not express an intent the funds would be counted as Alden's contribution toward postsecondary education subsidies. In addition, the record indicates Alden paid nothing toward the children's postsecondary education until ordered to do so by the court. We affirm the district court on this issue.

AFFIRMED IN PART; REVERSED IN PART.