

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 27 1986

CLERK SUPREME COURT

IN RE THE MARRIAGE OF MELINDA J. QUINN AND ~~THOMAS E. QUINN~~

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UPON THE PETITION
OF MELINDA J. QUINN,

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Filed August 27, 1986

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Petitioner-Appellee,

)

6-160
85-1227

AND CONCERNING
THOMAS E. QUINN,

)

Respondent-Appellant.

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Appeal from the Iowa District Court for Wapello County (No. DM2-234),
James D. Jenkins, Judge.

Respondent-husband appeals from entry of a modified decree increasing
and continuing child support for educational purposes. **AFFIRMED.**

Richard J. Gaumer of Webber, Gaumer & Emanuel, Ottumwa, for
respondent-appellant.

J. Wilson McCallister, Rock Island, Illinois, for petitioner-appellee.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

OXBERGER, C.J.

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In this appeal, respondent-husband challenges an order modifying the decree dissolving the parties' marriage by extending and increasing his child support obligations for educational purposes. He contends that the trial court erred in the following respects: (1) in finding a substantial change in circumstances since the entry of the original decree; (2) in finding that the change was not within the contemplation of the trial court when the original decree was entered; (3) in awarding a modified amount of child support greater than that requested by the custodial parent in her petition for modification and in excess of the respondent's financial capabilities; and (4) in ruling that the respondent was not entitled to credit for payments previously made which exceeded the amount ordered in the original decree.

In its ruling, the trial court stated its finding that a substantial change in circumstances had occurred since the filing of the original decree: the incomes of the parties had increased significantly, and each of the children were either enrolled in or contemplating attending college. On this basis, the court modified the decree by requiring the respondent to pay the sum of \$60 per week for each child who is both a full-time student and between the ages of eighteen and twenty-two. Because Thomas Jr. was a senior in college and expected to graduate in August of 1985, the court held that the respondent's obligation to him dated from March 1985, the date of the filing of the petition for modification, until Thomas Jr. graduated. Similarly, the court held the respondent responsible for the support obligations to Patrick dating back to March 1985 until Patrick's graduation from high school in June of the same year. Support to Patrick was to resume if he enrolled in post high school education and to continue until he graduated or reached age twenty-two. Because John was not a full-time student when the petition for modification was filed, the respondent's obligations to John were to begin

if and when John enrolled as a full-time student and to continue until he graduated or turned twenty-two.

Our standard of review in this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the findings of the trial court, but we do give them weight, especially concerning the credibility of witnesses. Iowa R. App. P. 14(f)(7).

The record reveals that in 1974, when the original decree was entered, the appellant's gross earnings were approximately \$150 per week, as compared to \$268 per week at the time of trial. The petitioner's gross earnings in 1974 were approximately \$100 per week, and had risen to \$386 at the time of trial. The appellant had been temporarily laid off from his employment at the time of trial and the \$268 was comprised of his unemployment benefits and sub pay. Prior to the layoff, his gross earnings were approximately \$580 per week. He had been laid off several times, and anticipated being recalled in the near future.

The amount of child support ordered in the original decree was extremely low, \$50 per month increased to \$60 per month by agreement of the parties, because this amount was all that the appellant's financial condition permitted at that time. His earnings have since tripled when he is not laid off and nearly doubled when he is. We find that the petitioner has sufficiently demonstrated the necessity for modification by illustrating the increased earnings of the appellant and the children's need for greater support allowances in order to complete their education.

We similarly dispose of the appellant's contention that the changes in the circumstances of the parties was envisioned by the trial court when the original decree was entered. At the time of the original decree, the children were only nine, eight, and six years old, and the earnings of the parties were very low. We find nothing in the record to support the appellant's contention that the subsequent changes in circumstances could have been within the contemplation of the court at that time.

The appellant next contends that the trial court erred in awarding an increased amount of child support in excess of the petitioner's request and beyond his financial capabilities. The courts of this state have repeatedly recognized that a child's entitlement to support is not dependent upon the acts or requests of his custodial parent. In re Marriage of Vrbanc, 293 N.W.2d 198, 203 (Iowa 1980); Anthony v. Anthony, 204 N.W.2d 829, 834 (Iowa 1973); Gerk v. Gerk, 259 Iowa 293, 298, 144 N.W.2d 104, 108 (1966).

The appellant's contention that the modified support obligation is in excess of his financial capabilities necessitates a careful consideration of the evidence in light of the factors set forth in Iowa Code section 598.21(8)(1985). Although the petitioner's current earnings exceed those of the appellant, he has greater assets and fewer expenses. It is unfortunate that his employment is unsteady and interrupted by layoffs. The trial court award would give the petitioner a total of \$2264 per month to support herself and three children attending college. After Thomas Jr.'s graduation, this amount would decrease to \$2124 per month. By contrast, the appellant would have \$264 per month to support himself and his wife until Thomas Jr.'s graduation, at which time he will have \$504. After being recalled, he will have \$1600 and \$1840 respectively. We have reviewed the record and considered all of the appellant's contentions, and conclude that the trial court's award should be affirmed.

The last contention raised by the appellant is that the trial court erred in failing to allow him credit for payments previously made in excess of the original support obligation. The purpose of the modification is to insure that the children not be deprived of educational opportunities because of a lack of resources. To allow the appellant credit for his past contributions would not only totally ignore the object of the modified obligation, it would defeat its purpose as well.

We affirm the modification decree entered in the trial court. Costs of this appeal are taxed to the appellant.

AFFIRMED.