IN THE COURT OF APPEALS OF IOWA

No. 8-565 / 97-2189
Filed February 24, 1999

IN RE THE MARRIAGE OF GERALD E. EGGERS AND MARY BETH EGGERS

Upon the Petition of
GERALD E. EGGERS,
Appellant,

And Concerning
MARY BETH EGGERS,
Appellee.

Appeal from the Iowa District Court for Dubuque County, K.D. Briner, Judge.

The petitioner appealed a district court order granting respondent's request for a modification of her child support obligations. **REVERSED.**

Robert L. Sudmeier and Norman J. Wangberg of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Monica L. Ackley, Dubuque, for appellee.

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

PER CURIAM

Gerald Eggers appeals the decision of the district court which modified the parties' dissolution decree to reduce Mary Beth Eggers' child support obligation. We reverse the decision of the district court and reinstate the original decree.

Gerald and Mary Beth were previously married. They have three children, Peter, born in 1982; Michael, born in 1985; and John, born in 1989.

The district court entered a dissolution decree for the parties on July 12, 1996. The court incorporated the parties' stipulation, which covered all issues except physical care of the children. The parties agreed Gerald had annual income of $32,657, and net monthly income of $1763. Mary Beth was employed as a manager by Pickle Barrel Sub Shops, and had annual income of $16,640, and net monthly income of $1079. The district court granted primary physical care of the children to Gerald. Applying the child support guidelines, the court ordered Mary Beth to pay child support of $389 per month for the three minor children.

On November 4, 1996, Mary Beth filed an application to modify the dissolution decree to reduce her child support obligation. She had decided to enter college in an effort to increase her earning potential. She reduced her hours at Pickle Barrel from forty hours per week to sixteen hours per week, which reduced her annual income to $6656. Mary Beth testified she was looking for full-time employment which would still allow her to pursue her education.

The district court found Mary Beth's decision to pursue a college education was genuinely motived by her desire to improve her employment prospects and earning potential. The court reduced her child support obligation to $75 per month. The court determined that if Mary Beth obtained full-time employment she should inform Gerald promptly. The court encouraged the parties to then agree to a modification without court intervention. Gerald appealed.

I. Our scope of review of a child support modification is de novo. *In re Marriage of Bolick,* 539 N.W.2d 357, 359 (Iowa 1995). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Gerald asserts Mary Beth should have been able to foresee she might attend college if she was not granted primary physical care of the children. Gerald points out the application for modification was filed only four months after the dissolution decree. He believes Mary Beth's failure to present evidence of her future plans at the dissolution hearing should prohibit her from now showing there has been a substantial change in circumstances.

The party seeking the modification must prove the change in circumstances by a preponderance of the evidence. *In re Marriage of Feustel,* 467 N.W.2d 261, 263 (Iowa 1991). The change of circumstances must not have been within the contemplation of the district court when the original decree was entered. *In re Marriage of Vetternack,* 334 N.W.2d 761, 762 (Iowa 1983).

Here, Mary Beth testified it was only after she learned she would not have primary physical care of the children that she considered her options, and decided to go to college. We agree with the district court's conclusion Mary Beth sufficiently showed a substantial change in circumstances which were not contemplated at the time of the dissolution decree.

III. Gerald contends Mary Beth is not entitled to a reduction of her child support obligation because the reduction of her income was voluntary and self-inflicted.

The supreme court has noted three trends in modification cases: (1) a growing reluctance to modify decrees; (2) current inability to pay has become less a consideration and long-range capacity to earn money has become more a consideration; and (3) any voluntariness in diminished earning capacity has become increasingly an impediment to modification. *In re Marriage of Walters,* 575 N.W.2d 739, 741 (Iowa 1998). Thus, when a party's inability to pay support is self-inflicted or voluntary, it will not constitute a ground for reduction of future payment. *In re Marriage of Swan,* 526 N.W.2d 320, 323 (Iowa 1995).

The supreme court has previously refused to modify the child support obligation of a father who quit his job as a postal carrier to work toward a nursing degree. *In re Marriage of Dawson,* 467 N.W.2d 271 (Iowa 1991). Under the circumstances of the present case, we find Mary Beth's decision to reduce her income while attending college was self-inflicted or voluntary. While Mary Beth did not

demonstrate an improper intent to deprive her children of support, her decision did place her own interests above those of her children. We determine the district court improperly reduced her child support obligation.

We reverse the decision of the district court which modified the parties' dissolution decree. We reinstate Mary Beth's child support obligation of $389 per month for the three minor children. Each party shall pay his or her own appellate attorney fees. Costs of this appeal are assessed to Mary Beth.

REVERSED.