

IN THE COURT OF APPEALS OF IOWA /

9-360 / 88-1781

IN RE THE MARRIAGE OF ROSE MARIE JOHNSON
AND DAVID RICHARD JOHNSON

FILED

OCT 05 1989

CLERK SUPREME COURT

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Upon the Petition of

ROSE MARIE JOHNSON,

Petitioner-Appellee,

And Concerning

DAVID RICHARD JOHNSON,

Respondent-Appellant.

Appeal from the Iowa District Court for Clinton County,
L.D. Carstensen, Judge.

Appellant appeals a district court order modifying the
parties' 1982 dissolution decree. **AFFIRMED.**

Bradley Norton and William Norton of Norton & Norton,
P.C., Lowden, for the appellant.

Simon W. Rasche, Jr., Camanche, for the appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J. 270

The husband appeals a district court order modifying the parties' 1982 dissolution decree. We affirm the trial court.

He challenges an increase in his child support award and a provision making the increase retroactive to the date the wife filed her modification petition. He also challenges an award of trial attorney's fees to the wife.

The parties' marriage was dissolved in 1982. The 1982 dissolution decree granted Rose physical custody of the parties' two children, boys born in 1975 and 1979. The 1982 decree directed David to pay Rose child support of \$40 per week. At that time both parties were unemployed, with Rose receiving ADC payments of \$360 per month and David receiving unemployment compensation of \$163 per week.

David remained unemployed or underemployed for several years after the decree, with annual income ranging from \$6,600 to \$8,700 for the years 1983 to 1986. However, he is now employed in the service department of a car dealership. His income is largely based on commissions, although he is guaranteed a gross income of \$700 per month. For the first eight months of 1988 his average net income was slightly over \$1,600 per month. David has remarried; his present wife does not work due to health problems, but she receives \$75 per week in child support for a child in her custody.

Rose presently works as a part-time school cook, earning \$576 per month for nine months per year. She also receives ADC and food stamps.

In 1988, Rose filed the present petition for a modification of the 1982 dissolution decree, seeking an increase in child support. The district court granted Rose's request; the court increased David's child support obligation to \$130 per week while both children are eligible and \$80 per week when only one child remains eligible. The court provided that this increase in child support would be retroactive to the date Rose filed her modification petition. The court also directed David to contribute \$350 toward Rose's trial attorney's fees.

Our review in cases such as these 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 Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

The court may subsequently modify an order for support pursuant to Iowa Code section 598.21(8). In determining whether there is a substantial change in circumstances, the court shall consider changes in employment, earning capacity, income, or resources of a party. The first and governing consideration is the best interests of the children. Sandler v. Sandler, 137 N.W.2d 591, 592 (Iowa 1965). When an increase seems necessary, support

provisions will be modified as long as the increase will not result in a positive wrong, injustice or undue burden on the father. Pucci v. Pucci, 259 Iowa 428, 433 (1966).

A modification of the child support order is justified in this instance. The father's income has increased substantially. It will not constitute an injustice or undue burden on the father to increase the child support to \$130 per week.

Appellant also contends that the increase in child support should not be made retroactive. Increases in child support may, in the sound discretion of the trial court, be made retroactive to the date of the filing of the application for modification. Spaulding v. Spaulding, 204 N.W.2d 634, 636 (Iowa 1973). The trial court did not abuse its discretion by making the increase in child support retroactive to the date of filing of the application for modification.

Section 598.36 of the Iowa Code provides that in a modification the court may award attorney fees to the prevailing party in an amount deemed reasonable by the court. The court did not abuse its discretion in awarding Rose \$350 in attorney fees.

AFFIRMED.