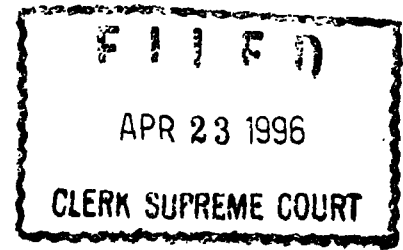


IN THE COURT OF APPEALS OF IOWA

No. 5-561 / 94-1682



IN RE THE MARRIAGE OF GAYLA M. BUSH
AND LAWRENCE P. BUSH

Upon the Petition of
GAYLA M. BUSH,

Appellee/Cross-Appellant,

And Concerning
LAWRENCE P. BUSH,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

Parties appeal and cross-appeal modification of child support provisions of
dissolution decree. **AFFIRMED.**

Carol A.H. Freeman of Lane & Waterman, Rock Island, Illinois, for appellant.

Daniel L. Bray, Iowa City, for appellee.

Considered by Cady, P.J., and Huitink and Streit, JJ.

STREIT, J.

This is an appeal and cross-appeal from a modification action. Our review is de novo. Iowa R. App. P. 4. We affirm.

Lawrence and Gayla were married in 1978 and had one child, Bryan, born April 17, 1986. The parties' marriage was dissolved by an Illinois court on March 1, 1988, and Gayla was awarded the primary care of the parties' son. The Illinois decree contained the following language setting forth Lawrence's obligation to pay child support.

The HUSBAND'S net income is approximately \$3,000 per month plus a discretionary bonus and the WIFE'S net income is approximately \$1,500 per month. Based on those sums the HUSBAND shall pay as support for BRYAN the sum of \$600 per month plus 10% of any net bonus up to \$10,000 and 20% of any net bonus in excess thereof. "Net Bonus" as used herein is defined as any compensation received by the HUSBAND from his employer in excess of his annual base salary after deduction of properly calculated state and federal income taxes and F.I.C.A. contributions.

It is not disputed Lawrence paid \$600 per month in child support as required by the decree. It does not appear to be seriously disputed Lawrence paid additional child support based on bonuses he received in 1987, 1988, and 1989.¹

In 1990 Lawrence assumed a new position within his family's company. His salary increased to approximately \$97,000, and it increased again in 1993 to \$110,000.

¹Gayla's testimony suggests Lawrence only paid a "portion" of the support due upon the 1987-89 bonuses, but she does not challenge the amount of those payments in this appeal.

Lawrence contends he did not receive bonuses after 1990 and therefore had no obligation to pay any additional support beyond \$600 per month.

Gayla filed a modification petition in 1993. She sought an increase in the amount of Lawrence's child support obligation, an increase in the amount of life insurance coverage Lawrence was to maintain, and a determination of Lawrence's child support arrearage based on the additional income he had received since 1990.

At the time of the dissolution, Larry was employed by his family's company, and he was concerned because much of his income at that time was comprised of bonuses. Gayla testified at the modification hearing about the circumstances existing at the time of the dissolution trial.

Larry stated in court that a significant portion of his compensation was going to be in the form of a discretionary bonus, that he had a base salary of \$60,000, and that it was the policy of the company to award bonuses to the employees and the bonuses were a significant amount of the compensation. So in order to not be financially strapped because he wouldn't know what the bonus amount would be, he -- the Judge determined that there would be a base amount of support on -- on his guaranteed salary and the bonus would be calculated based upon a formula when he received the bonus.

The trial court in the modification action ruled the Illinois decree had established a net base annual income of \$36,000 upon which Lawrence was to pay \$600 per month in support "and any amount over \$36,000 is 'net bonus' income, upon which child support is computed by adding 10 percent of the first \$10,000 and 20 percent thereafter." The trial court found Lawrence was in arrears for not paying additional

support in 1990-93 on his net income above \$36,000 and ordered him to pay a \$39,800 arrearage. The trial court increased Lawrence's monthly child support obligation to \$1,500 and denied Gayla's request for an increase in Lawrence's life insurance coverage.

Both Lawrence and Gayla appeal. Lawrence argues he does not owe any child support arrearage and his child support obligation should not have been increased to \$1,500 a month. Gayla contends Lawrence's support obligation should have been increased to \$2,000 per month and he should have been ordered to increase his life insurance coverage to \$250,000. Both parties request an award of appellate attorney fees.

I. Child Support Arrearage.

We find the trial court was correct in concluding there was a \$39,800 child support arrearage. At the time of entry of the dissolution decree, Lawrence was employed by his family's business. Lawrence received a base salary but knew much of his compensation could come from bonuses. The dissolution decree was structured to accommodate the uncertainty he had about what level of income he would receive above his base net income of \$36,000. Once his request was accommodated, Lawrence moved into positions within his family's business in which he received substantial increases in salary and no bonuses. By shifting his earnings to salary rather than

bonuses, Lawrence avoided paying child support above the \$600 monthly minimum set forth in the decree.

Lawrence's behavior in the modification trial lends support to our belief that he is not above engaging in manipulation, ruse, or device in order to avoid paying additional support. On September 15, 1993, in a loan application to a bank, Lawrence represented he had a net worth of \$741,489. Yet in an exhibit he submitted to the court at the modification trial, he claimed his net worth on September 30, 1993, was only \$395,101. When confronted with these differing figures, Lawrence admitted he had probably misrepresented his net worth.

Lawrence's credibility is clearly in issue, and we find that through his status as an employee and part-owner of a family business, he deliberately avoided his obligation to pay additional child support by structuring his increased earnings as salary rather than as bonuses. We affirm the trial court's finding of a child support arrearage.

II. Child Support Modification.

The trial court increased Lawrence's support obligation to \$1,500 per month. Lawrence contends his child support obligation should not have been increased above \$675 a month, and Gayla contends it should be \$2,000.

We find a substantial and material change in circumstances warranted a modification of the support. The parties' dispute over the "bonus" language in the decree, Lawrence's substantial increases in income, and the increased needs of the

parties' child are all factors supporting modification. Gayla testified about the increased needs of Bryan since entry of the 1988 decree. Among her increased expenses are the costs of Bryan's private school. At Lawrence's insistence Bryan is enrolled in a parochial school.

Since the amount of child support has been appealed, we are required to recalculate the child support obligation according to the new child support guidelines which became effective July 1, 1995.² Lawrence reported \$162,948 in wages and other income on his 1993 tax returns. After deductions for taxes and consideration of his additional qualified dependents, Lawrence has approximately \$9,000 in net monthly income. Gayla has a net monthly income of approximately \$3,000. Given Lawrence's level of income, the appropriate amount of support rests within the court's discretion, but must be at least sixteen percent of his net monthly income (\$1,449).

In setting Lawrence's support at \$1,500 a month, the trial court considered the lifestyles and needs of the parents and child. Given Lawrence's history of increasing levels of income and his affluent lifestyle, we find child support of \$1,500 was well within the trial court's reasonable range of discretion and we do not modify it.

² The new child support guidelines "shall apply to cases pending on the effective date." We interpret this language by the supreme court to mean the guidelines are to be applied to all cases pending on July 1, 1995, including those on appeal.

III. Insurance.

The original decree required Lawrence to maintain a policy or policies of insurance on his life for the benefit of Bryan in the amount of \$150,000 for as long as Lawrence remained liable for the support of Bryan, including college expenses. Gayla sought an increase in the coverage. She argues it is necessary to secure Lawrence's increased support obligation. She requests the coverage be increased to \$250,000. Gayla offers no compelling reason to support this request, and we affirm the trial court's denial.

IV. Appellate Attorney Fees.

Both parties request appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppelle*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Id.* Given the circumstances of the parties in this action, we find equity does not warrant an award of appellate attorney fees.

AFFIRMED.