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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-516 / 92-14

IN RE THE MARRIAGE OF JOAN S. STRULOWITZ AND STEVEN J. STRULOWITZ

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Upon the Petition of

JOAN S. STRULOWITZ,

Petitioner-Appellee/Cross-Appellant,

And Concerning

STEVEN J. STRULOWITZ,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

The respondent husband appeals from a judgment of the district court in a modification action increasing his child support. **AFFIRMED IN PART AND MODIFIED IN PART.**

Daniel L. Bray, Iowa City, for appellant.

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander & Preacher, Bettendorf, for appellee.

Considered by Schlegel, P.J., Sackett, and Habhab, JJ.

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SACKETT, J.

Respondent-appellant Steven J. Strulowitz appeals a decree modifying his dissolution decree and ordering the child support previously ordered to be increased to $1500 per month. Steven contends his child support obligation should not have been increased and he should not be required to pay child support and college expenses for his college age daughter. We affirm in part and modify in part.

The marriage of Steven and petitioner-appellee Joan S. Strulowitz was dissolved in 1989. The physical care of the parties' two daughters, Jennifer born November 11, 1971 and Megan born December 14, 1973, was awarded to Joan. There was substantial property which was divided. Steven was ordered to pay child support. The provision of the decree that provided for child support read as follows:

> Respondent shall pay to Petitioner, through the Clerk of this Court, for the use and support of the minor children of the parties, the sum of $860 per month per child, and each such payment shall become a judgment as the same becomes due and payable. Said child support payments to continue until each such child becomes eighteen and graduates from high school, becomes married or otherwise self-supporting, or is no longer qualified under the provisions of Chapter 598.1 and 598.21, whichever first occurs.. . . (Emphasis supplied).

An appeal from this decree was taken to this court. In an unpublished decision, In re Marriage of Strulowitz, 474 N.W.2d 288 (Iowa App. 1991), we remanded to the trial court on the issue of child support with directions to apply the

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child support guidelines. On remand the trial court amended the decree by adding, "Child support guidelines established by the Supreme Court at $605 per month per child, are inadequate under all the circumstances previously found."

On February 2, 1990, Joan filed an application to modify the decree to assure additional college expenses for Jennifer. By this time Jennifer was over eighteen and had finished high school, consequently, under the language used in the decree, Steven no longer owed child support to Joan for Jennifer. See also In re Marriage of Lindberg, 462 N.W.2d 698, 701 (Iowa App. 1990).

On May 16, 1991, the trial court ordered Steven to pay one-half of Jennifer's college expenses and ordered Steven to reimburse Joan $5306 for college expenses she had paid. In making this ruling the trial court in dicta said, the child support payments after age eighteen continued pursuant to 598.1 and 598.21.

Then on May 17, 1991, the day after the above ruling, Joan filed another application for modification and asked for child support in accordance with the child support guidelines. The trial court on December 10, 1991, ordered the child support previously issued to be $1500 per month per child. This appeal followed.

Steven contends he should not be paying child support for adult children and he should be paying college expenses

to his daughters, not to their mother. Joan argues the decree provided child support be paid to her while the children were in college and she should be paid both child support and college expenses from Steven.

The only issue considered by the trial court in the order appealed from was whether child support should be increased. The question of whether child support was to be paid until these children were eighteen and had finished high school or whether child support was to be paid for these children through age twenty-two and single and in college was not an issue before the trial court when the order increasing child support was entered. Consequently, the only issue before us is should the child support be increased. The issue of how the discrepancy of the May 17 order and the dissolution decree should be justified is not before us. The record does not give us a clear answer to that question. We can however on this record address the very narrow issue that is before us, that is, whether the child support should have been increased to $1500 per month. We can do so without determining how long child support was to have been paid under the decree and the first modification. Our decision in this case is not meant to decide that issue.

We agree with Steven that this is not a matter of modifying child support under the child support guidelines except for the four days following the modification before

the younger girl became eighteen. See In re Marriage of Davis, 462 N.W.2d 703, 705 (Iowa App. 1990).

In Iowa a person eighteen years of age or older is considered an adult. Parents in Iowa have no legal duty to support adult children save the provisions of 598.1(2) which imposes a limited duty under certain circumstances for divorced parents of single children under the age of twenty-two years of age who are in good faith students. This statute imposes an obligation on divorced parents toward their adult offspring to support them while they are attending school but there is no corresponding statutory obligation imposed on married parents of adult students. See In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984).

The Iowa court upheld the constitutionality of the provision in In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980), and said:

> It [section 598.1(2)] does not require such support in all cases. It allows the trial court, in its discretion, to award support of the children through college under the proper circumstances. Among the factors to be considered are the financial condition of the parent, ability of the child for college work, age of the child, and whether the child is self-sustaining or not.

The child support guidelines are not used to determine support for an unmarried adult child under twenty-two years of age who is a student. See Lindberg, 462 N.W.2d at 701; In re Marriage of Lieberman, 426 N.W.2d 683, 685 (Iowa App. 1988).

Because the statutory obligation of 598.1(2) places an obligation on a divorced parent that he or she would not by law have if he or she were still married to the adult student's other parent, the statute must be strictly construed in fixing the obligation. In re Marriage of Voyek, 491 N.W.2d 189, 191 (Iowa App. 1992).

Both parents have ample resources to assist their children obtain a college education. A large part of the record is an argument over who spends more money and whether certain luxuries are necessary. This is not a retrial of the dissolution and we will not treat it as such. The ability of each party to intelligently allocate his or her resources is of no interest to us except to the extent necessary for us to assure the children of this marriage have financial support for education beyond high school if they meet the statutory requirements. We have already decided both parents have the ability to assist them.

We first address the issue of increasing the child support for the younger daughter, Megan, to $1500 a month. We affirm the increase to $1500 per month until she is eighteen and finishes high school. We strike any other increase in support for this child.

The trial court in imposing the order fixing child support at $1500 per month per child found Steven had an obligation to share his lifestyle and his children were

deserving of enjoying a standard of living equivalent to their parents and they deserve to be able to remain within the social and physical life-style established by their parents over the years. We agree with the trial court that Steven has or had this obligation to his children until they reached their majority. We do not agree with the trial court that Steven has this obligation to his adult children. The law does not place a responsibility on married parents to share their life-style with adult children. We will not interpret section 598.1(2) to place such a responsibility on parents whose marriages have been dissolved. The question of how much of a parent's affluence he or she should share with adult offspring has no right or wrong answer. There are theories that too much help may hinder young adults' ambition and too little money may strain relationships. These are individual decisions that are best left to the families. We intervene only to assure children of a broken marriage who are unmarried and under twenty-two years of age and students in good faith are afforded the financial opportunity for a college education to the extent of their parents' ability to contribute. We therefore strike any increase in child support that was or may have been made for Megan after she was eighteen and graduated from high school and we strike any increase in child support that was or may have been made for Jennifer.

Joan has requested attorney fees on appeal. The trial court denied her application finding she had sufficient resources to pay her own attorney fees. We agree with the trial court that she has sufficient assets to pay her own attorney fees and we order no fees on appeal. The cost of this appeal shall be paid one-half by Steven and one-half by Joan.

AFFIRMED IN PART AND MODIFIED IN PART.