

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**RE THE MARRIAGE OF RONALD R. ANDERSON AND CAROLE L. ANDERSON**

FROM THE PETITION OF
 RONALD R. ANDERSON,

)

)

Filed April 8, 1983

Petitioner-Appellee,

)

AND CONCERNING
 CAROLE L. ANDERSON,

)

3-27
 2-68952

Respondent-Appellant.

)

Appeal from Linn District Court, Robert E. Ford, Judge.

Respondent-wife appeals from a modification of child support provisions.

MODIFIED AND AFFIRMED.

Brian L. Gruhn and Gregory J. Epping, Cedar Rapids, for respondent-appellant.

Dennis Currell, Cedar Rapids, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

nson, J., takes no part.

OXBERGER, C.J.

Respondent Carole Anderson appeals from a modification of child support provisions. We modify and affirm the trial court order.

The parties' 1972 dissolution decree incorporated a stipulation awarding the child support in the amount of \$10 per week per child until each child attains the age of eighteen years, marries, or dies, whichever comes first. Carole was on ADC and Ronald had an income of \$4,880.33.

On September 11, 1981, Carole filed an application for modification. On April 14, 1982, the trial court modified the decree and increased the amount of child support to \$40 for both of the minor children. The court denied Carole's request that the increased payments be effective as of the date of filing the application.

Willcox v. Bradrick, 319 N.W.2d 216 (Iowa 1982), provides that increases in support awards may be retroactive to the date of filing the application in appropriate circumstances. See also Spaulding v. Spaulding, 204 N.W.2d 634, 636 (Iowa 1973), where the court held that a parent could be required to pay increased child support as a result of a modification proceeding "retroactive to . . . the date [of the filing of] the application for modification. . . ." There is, however, no requirement that such modifications be made retroactive. We find that the trial court in the instant case was not unreasonable in denying retroactive payments.

Carole next argues that Ronald paid only \$10 per week per child for ten years, but that since he is now earning \$21, 948.96 annually, he should be required to pay \$35 per week per child. We agree and modify the decree accordingly.

Carole contends that the child support payments should continue until the children have completed their education, pursuant to Iowa Code section 598.1(2). Ronald claims that the code section was adopted after he signed the stipulation

limiting the time until the children reached the age of eighteen years. The original decree was dated June 29, 1972, and the new code section became effective July 1, 1972.

In Willcox, supra, the 1967 decree ordered the husband to pay child support until the children reached majority or graduated from high school, whichever occurred first. After his son graduated from high school, the husband stopped his payments. The court upheld the trial court's modification of the decree, providing that payments continue until the child reaches the age of twenty-one. Referring to In re Marriage of Harless, 251 N.W.2d 212, 213 (Iowa 1977), the court noted that it had held that the legislature's lowering of the age of majority from twenty-one to eighteen years was to have prospective application only, but that "the law in effect at the time of the decree should govern." Willcox at 218.

Under the Harless-Willcox rule, we must follow the law in effect on the date of the Andersons' decree, June 29, 1972. At that time, the age of majority was twenty-one. In Willcox, the decree approved and ratified a stipulation providing that the husband provide child support until the parties' two sons "reached their majority, graduate from high school, or become self-supporting, whichever contingency arises first." After the oldest son graduated from high school, the husband discontinued contributing to that son's support. Upon application for a modification of the original decree, the district court ordered the husband to pay an increased amount of support for each of the children "until each child reaches the age of twenty-one." The supreme court upheld the trial court's order, holding: "So long as the court had the power to order continued support payments the fact that the original support obligation had terminated does not preclude modification to extend it." Id. Since the oldest child in Willcox was eighteen years old at the time the application was filed, he was a minor and was

ward of the court, and the court had authority under Iowa Code section 598.21(8) to modify the original award of support. We interpret this to mean that the law determining the age of majority is the law in effect at the time the decree was entered.

In the instant case, Lisa was eighteen, Tracy seventeen, and Kelly fifteen on the date the application for modification of the decree was filed. Under the law applicable to the original decree, all of them were minors at the time of the application for modification, and the court had the authority to extend payments until each of them reached majority, i.e., twenty-one years of age. We therefore modify the trial court's decree to provide that Ronald shall pay to the clerk of the trial court for distribution to Carole child support in the amount of \$35 per week for each of the three children. This support shall terminate as each child reaches the age of eighteen, becomes self-supporting, or marries, whichever occurs first. If a child between the ages of eighteen and twenty-one is enrolled full-time in high school or post-high school formal education, Ronald's obligation to support that child shall continue. This modification shall be effective prospectively upon issuance of procedendo from this court.

Iowa Code chapter 598 does not provide for an award of attorney fees in a modification proceeding. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1977). Each party is therefore responsible for his or her own attorney fees incurred both at trial and on this appeal.

MODIFIED AND AFFIRMED.