IN THE COURT OF APPEALS OF IOWA

No. 9-029 / 98-575

Filed June 23, 1999

IN RE THE MARRIAGE OF TERI LYNETTE LADWIG AND THOMAS JAMES LADWIG

Upon the Petition of
TERI LYNETTE LADWIG,
Appellee,

And Concerning
THOMAS JAMES LADWIG,
Appellant.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

The respondent appeals a district court order granting petitioner's request for modification of child support. **AFFIRMED.**

Robert B. Deck of Deck & Deck Law Office, Sioux City, for appellant.

Thomas A. Vakulskas of Vakulskas & Hoffmeyer, P.C., Sioux City, for appellee.

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

STREIT, J.

Tom Ladwig appeals the trial court's order regarding the date his child support obligation commenced and the court's determination of his income in calculating child support. Because we find the court-approved stipulation between the parties agreeing to commence child support on a specific date is enforceable, we affirm. Because we find Tom voluntarily reduced his income, we affirm the trial court's determination of his income and affirm its child support calculation.

I. Background Facts & Proceedings.

Thomas and Teri Ladwig were divorced in May of 1991. Pursuant to the divorce decree, Teri was awarded physical care of the couple's two children, Katherine, who was twelve, and Jennifer, who was five. Thomas was ordered to pay child support of $252 per month until the children completed their high school education.

The decree was modified several times in regard to physical custody of the children and child support. Ultimately, the parties drafted a stipulation agreeing Thomas would have physical care of Katherine and Teri would have physical care of Jennifer. The agreement contained the following provisions: (1) Thomas would not pay child support for Jennifer while Katherine lived with him, but support for Jennifer would resume after Katherine's graduation from high school in June 1996; (2) the parties would exchange tax returns, current wage statements, and other financial information at a later date to determine child support for Jennifer; (3) Teri would

provide dental insurance for both children, and Thomas would reimburse her for half the premiums paid; (4) Teri would pay for all of Jennifer's medical and dental bills not covered by insurance, but the parties would split the cost of Jennifer's orthodontist bills; and (5) Thomas would be responsible for all Katherine's uncovered medical and dental bills. The written agreement was approved by the court in September of 1995.

In October of 1997 Teri filed a petition to modify the decree alleging Thomas owed child support of $517 per month from June 1996 until June 1997, a total of $6721. She additionally claimed Thomas owed child support of $479 per month from July 1997 until February 1998, a total of $3832. Teri also requested recovery for the cost of Jennifer's braces.

The court determined Thomas's child support obligation for Jennifer to be $442 per month, based on Teri's income of $35,836 and Thomas's income of 35,537. The court found Thomas in arrears on his child support obligation from June 1996 to June of 1997 in the amount of $6317.48 and from July 1997 until February 1998 in the amount of $3980.97. Thomas was further ordered to pay Teri one-half of all dental and medical insurance for Jennifer and all uncovered medical and dental costs for Jennifer and Katherine from and after October 1997. Thomas appeals.

II. Standard of Review.

We review a district court's modification of a dissolution decree de novo. *In re Marriage of Courtade*, 560 N.W.2d 36, 37 (Iowa App. 1996); Iowa R. App. P. 4.

We give weight to the findings of the trial court, but are not bound by them. *Id.* at 37; Iowa R. App. P. 14(f)(7).

III. Child Support.

A. Commencement of Child Support Obligation for Jennifer & Obligation to Pay Medical Costs.

Tom contends the trial court erred in ordering him to pay child support for Jennifer retroactive from June 1996. He argues because Teri did not file her petition for modification until October 14, 1998[1], pursuant to section 598.21(8) of the Iowa Code, no support can be ordered before January 21, 1998. Section 598.21(8) of the Code states:

> Judgements for child support or child support awards entered pursuant to this chapter . . . may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997.

Iowa Code § 598.21(8) (1997).

Operation of the statute is contrary to a provision in the court-approved stipulation between the parties obligating Tom to resume child support payments for Jennifer in June of 1996. That provision states:

> It is anticipated that Katherine Elaine Ladwig will graduate from high school in May of 1996. In the event Katherine Elaine Ladwig does graduate from high school in May of 1996, *the parties agree that child support shall be paid effective June, 1996.* The parties agree to exchange tax returns, current wage

---

[1] Tom received notice of the petition on October 21, 1998.

> statements, or any other items of financial information sufficient to determine what the parties' income is to adjust for the anticipated change of circumstances with her anticipated early high school graduation for entry of child support for Jennifer Lynette Ladwig. It is anticipated that both parties will exchange this financial information so as to avoid costly litigation. (Emphasis added.)

The conflict between the statute and the stipulation requires us to interpret the terms of the stipulation and then assess whether it is enforceable.

A stipulation in a dissolution proceeding is a contract between the parties, but becomes final only when accepted and approved by the court. *In re Marriage of Von Glan*, 525 N.W.2d 427, 430 (Iowa App. 1994). When a stipulation merges into a decree, it is then to be interpreted and enforced as a final judgment of the court, not as a separate contract between the parties. *Id.* A dissolution of marriage decree is susceptible to interpretation on the same basis as other instruments, the determinative factor being the intent of the dissolution court as gathered from the language of the decree and the context in which it was rendered. *Sieren v. Bauman*, 436 N.W.2d 43, 46 (Iowa 1989) (citing *Bowman v. Bennett*, 250 N.W.2d 47, 50 (Iowa 1977)). In determining the court's intent, we look not to the court's conclusion about the parties' intent when entering into the stipulation, but to the document, as it expresses the court's intent. *See In re Marriage of Sylvester*, 412 N.W.2d 624, 627 (Iowa 1987).

The terms of the stipulation in regard to this issue are clear. The parties agreed child support shall be paid from June 1996. Tom argues his June 6, 1996, child support obligation was contingent upon the parties' exchange of financial information

before that time. This exchange was not made until August of 1996 on Tom's behalf and July of 1997 on Teri's behalf. We do not interpret the stipulation this way. To suspend child support due contingent upon the exchange of financial information would be adverse to Jennifer's best interest. We do not think the court, in adopting the stipulation, or the parties, in drafting the stipulation, intended such a result. So while the amount Tom owed remained uncertain until the exchange of financial information was complete, the date from which he was obligated to pay child support was not.

After determining the meaning of the stipulation, we assess its enforceability. A stipulated settlement in regard to child support is enforceable only if it does not adversely affect the best interests of the parties' children[2]. *In re Marriage of Udelhofen*, 538 N.W.2d 308, 310 (Iowa App.1995) (citing In re Marriage of Zeliadt, 390 N.W.2d 117, 119 (Iowa 1986)). Given the above interpretation, the stipulation is in Jennifer's best interest and is enforceable. The trial court was correct in calculating Tom's child support obligation, retroactive, from June of 1996.

Tom also contends he is not obligated to pay medical costs as set out in the stipulation. The stipulation's provision in regard to medical costs states:

> In the event the Respondent is required to pay part or all of the premium costs of medical insurance for the minor children, then

---

[2] We find the same principles which determine the enforceability of a stipulated settlement in regard to deviation from the child support guidelines apply to this question and look to the terms of the stipulation to assess whether the best interest of the children is adversely affected.

> the parties agree to split evenly the costs of the medical insurance for the minor children.
>
> . . .
>
> The parties agree that the Petitioner shall be responsible for all medical and dental bills not covered by insurance for the minor child Jennifer Lynette Ladwig, except the parties agree to split evenly all orthodontist bills for Jennifer not covered by insurance. The parties further agree that the Respondent shall be responsible for all medical and dental bills not covered by insurance for the minor child Katherine Elaine Ladwig.

The trial court, pursuant to the stipulation, ordered Tom to pay all Katherine's uncovered expenses and one-half of Jennifer's uncovered medical and dental expenses from October of 1997. There is no other interpretation which can be given these provisions of the stipulation. The provisions are in the best interests of the children and are enforceable. *See Udelhofen*, 538 N.W.2d at 310. The trial court is affirmed on this issue.

B. Calculation of Child Support Obligation.

Tom contends the trial court erred in finding he voluntarily reduced his income for the purpose of lowering his child support payments and imputing a higher income to him in its child support calculation. Tom also contends, on appeal, Teri has a much higher earning capacity than the income figure used in the court's calculation. Because Tom did not raise the second issue in any manner at trial, he has not preserved it for appeal and we address only his first complaint. *See Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633, 638 (Iowa 1998) (failure to preserve error by making a proper objection bars appellate review of an issue).

At trial, Teri alleged Tom's higher earning capacity was a substantial change in circumstances warranting modification of his child support obligation. Tom asserted his was lower and this constituted a substantial change which should result in a lesser child support obligation.

There must be a substantial change of circumstances to warrant modification of the child support provisions of a dissolution decree. Iowa Code § 598.21 (1997); *In re Marriage of Hester*, 565 N.W.2d 351, 353 (Iowa App. 1997). The change must be more or less permanent or continuous, it must not have been within the contemplation of the original trial court, and continued enforcement of the original decree in light of the changed conditions must result in positive wrong or injustice. *In re Marriage of Vetternack,* 334 N.W.2d 761, 762 (Iowa 1983). Furthermore, a change in financial conditions must be substantial. *Id.*

Self-inflicted or voluntary reduction in earning capacity is a factor considered by the court in determining whether a modification is warranted. *In re Marriage of Foley,* 501 N.W.2d 497, 500 (Iowa 1993). Parents are not to gain an advantage by reducing their earning capacity and ability to pay support through improper intent or reckless conduct. *Id.* However, at times circumstances arise which are beyond the control of the parent and undermine the parent's ability to maintain a particular level of income. *See In re Marriage of Swan,* 526 N.W.2d 320, 324 (Iowa 1995) (father did not voluntarily resign from job and his decision to return to school was not made with improper intent); *Foley,* 501 N.W.2d at 500 (although spouse was responsible

for loss of job, there was no intent to deprive children of support or evidence of reckless disregard for welfare of children).

Thus, the inquiry does not merely focus on the voluntariness of the conduct responsible for a reduced earning capacity, but whether the obligor has reduced his or her income with an improper intent to deprive the children of support or in reckless disregard for the children's well-being. *See Walters v. Walters*, 575 N.W.2d 739, 741 (Iowa 1998). An inquiry into the voluntariness of the act which causes the reduction of income and the intent of the obligor has defied hard and fast rules in regard to when a commensurate reduction in child support obligation is warranted. *See Swan*, 526 N.W.2d at 324.

In this case, Tom worked as a security officer in addition to his employment at the Woodbury County sheriff's office for several years prior to July of 1997. The evidence showed he had always chosen to work a significant amount of moonlighting hours, earning approximately $4500 yearly performing such work. Tom had a contract with the WinneVegas casino which he had the opportunity to renew in July of 1997, but chose not to do so. He did not seek other security work, although it was available. The trial court found that Tom's sole motivation for not renewing his contract at WinneVegas or seeking other moonlighting work was to lower his child support obligation. The court found Tom's explanation that changes in his job at the sheriff's office prohibited him from continuing moonlighting at other security jobs not credible. Although we are not bound by the district court's findings of credibility,

we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Swenka*, 576 N.W.2d 615, 616 (Iowa App. 1998). We have found no evidence in the record which contradicts the trial court's credibility finding on this issue.

Considering all of the relevant factors and evidence, we conclude Tom acted with reckless disregard to those who relied on his support by intentionally reducing his income. The evidence reasonably points to the conclusion Tom's reduced income was a result of factors arising from his divorce, not factors outside his control or personal considerations compatible with the interests of those who require his support. For these reasons, we find the trial court's determination of the parties' incomes and calculations of child support correct and affirm the trial court's order in regard to child support in all respects.

AFFIRMED.

No. 98-575. [9-029] IN RE MARRIAGE OF LADWIG

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Huitink and Streit, JJ. Opinion by Streit, J. (10 pages $4.00)

Tom Ladwig appeals the trial court's order regarding the date his child support obligation commenced and the court's determination of his income in calculating child support. The court-approved stipulation between the parties agreed to commence child support on a specific date. **OPINION HOLDS:** A stipulation in a dissolution proceeding is a contract between the parties, but becomes final only when accepted and approved by the court. The terms of the stipulation in regard to this issue are clear. A stipulated settlement in regard to child support is enforceable only if it does not adversely affect the best interests of the parties' children. We find the provisions in the best interests of the children and enforceable. We also conclude Tom acted with reckless disregard to those who relied on his support by intentionally reducing his income. The evidence reasonably points to the conclusion Tom's reduced income was a result of factors arising from his divorce, not factors outside his control or personal considerations compatible with the interests of those who require his support. The trial court's determination of the parties' incomes and calculations of child support are correct.