FILED
OCT 2 3 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-237 / 89-1131

STATE OF IOWA, ex rel., BETTY JO BOYER, p/k/a BETTY JO HENKEL,

Appellant,

vs.

STEPHEN J. BOYER,

Appellee.

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

The State has appealed the district court's order modifying the original decree to reinstate child support. **AFFIRMED.**

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; E. Dean Metz, Assistant Attorney General; and Mark L. Bowling, Assistant County Attorney; for appellant.

David H. Sivright, Jr. of Shaff, Van Scoy, Sivright & Kross, Clinton, for appellee.

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

SCHLEGEL, J.

Stephen and Betty Boyer's marriage was dissolved by decree in 1981. Pursuant to the decree, Stephen was ordered to pay Betty $125 per month for support of their daughter, Brenda. The decree provided that the child support should be paid until Brenda reached 18 years of age and until she reached 22 years of age if she was a full-time college student.

In August 1982 the district court ordered a mandatory wage assignment covering current and past arrearages. In April 1985 Brenda turned 18 years old. On August 16, 1985, the Child Support Recovery Unit filed a statement with the court indicating that the arrearages had been paid in full and that Brenda had become emancipated. Accordingly, the district court entered an order on that date finding that Brenda was emancipated and terminated the wage assignment. Stephen subsequently discontinued his child support payments.

In the fall of 1985 Brenda became a full-time student at Monmouth College. Not until June 1987, however, did Betty file a document stating that Brenda was a full-time college student and that Stephen owed child support for Brenda's college expenses. On April 20, 1989, the Child Support Recovery Unit served an order for mandatory income withholding on Stephen's employer, alleging a $4,442.91 delinquency. On April 25, 1989, Stephen filed a motion to quash pursuant to Iowa Code section 252D.2(1). Stephen

argued Betty had an obligation to establish that Brenda was attending college once his support obligations terminated in April 1985. Stephen maintained that she was required to apply for a modification of the original decree.

The district court agreed with Stephen and quashed the wage assignment petition. On appeal, the State argues that while Stephen's child support obligations terminated when Brenda turned 18, such obligations were automatically reinstated without the need for an application for modification. The State also argues that the court's order quashing the wage assignment canceled Stephen's past due child support. We affirm.

Because the present case was tried in equity, our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

It has been long settled under Iowa law that a parent's child support obligation ceases when a child reaches 18 years of age, unless one of the statutory provisions of Iowa Code section 598.1(2) are met. Pursuant to that section, a trial court may order child support to be continued beyond 18 years of age provided that there is a showing that a child is in good faith enrolled in college. Iowa Code § 598.1(2) (1989). Section 598.1(2) thus imposes an obligation on divorced parents to support their children while they are attending college. In re Marriage of

Rohlfsen, 398 N.W.2d 197, 200 (Iowa App. 1986). Our courts have recognized that the trial court pursuant to section 598.1(2) could allow a modification at any time until the child reaches the age of 22. In re Marriage of Marshall, 394 N.W.2d 392, 396 (Iowa 1986).

The question we are asked to decide in the present case is whether the Child Support Recovery Unit may seek a wage assignment for child support, where the child has reached the age of majority and the support obligation has terminated pursuant to court order, without making a proper showing to the court that the circumstances of section 598.1(2) are now satisfied. We are convinced that once a party's support obligation has been terminated by order of the trial court declaring the child emancipated, it is incumbent upon the party seeking continued child support to make a proper showing to the court that the conditions of section 598.1(2) have been met.

We are guided by a number of Iowa cases discussing the trial court's power to modify the original decree concerning child support after the age of majority has been reached. In the case of In re Marshall, 394 N.W.2d 392 (Iowa 1986), the Iowa Supreme Court considered the question of when alimony terminates and how may such payments be continued. The Marshall court noted that Iowa law recognizes that remarriage does not automatically terminate the court's authority to modify alimony, but may be continued by the party seeking continued payments by

showing extraordinary circumstances. 394 N.W.2d at 395. The court in Marshall also noted that modification has been allowed in the award of child support even though the support has terminated under the terms of the initial decree. Id. However, a proper showing must be made before such modification can be obtained. Id.

In In re Marriage of Pieper, 369 N.W.2d 439, 440 (Iowa 1985), pursuant to the original decree the child support obligation terminated when the child in question reached 18 years of age. The child support obligation had terminated before the child began college. 369 N.W.2d at 440. One and one-half months after the obligation ended, the child's mother petitioned for a modification. Id. at 440-41. The Iowa Supreme Court upheld the trial court order granting the modification. Id. at 442. In In re Marriage of Rohlfsen, 398 N.W.2d 197, 199 (Iowa App. 1986), the original decree had provided that the father was to provide child support for his children's college expenses until the age of 22, though the oldest child was only 9 years old at the time. We held that the trial court has continuing authority to modify the child support order, and held the child support provision concerning college expenses was premature. 398 N.W.2d at 199. We also held that once each child reaches the age of majority, either party could petition the trial court to provide support for college expenses. Id. at 200.

While the above cases are factually distinct from the present case, we nevertheless find a recurring theme throughout these cases, namely, that once a child support obligation has terminated, it is incumbent upon the party seeking further child support payments to cover college expenses to make a showing to the court that the conditions of section 598.1(2) have been met. In the present case, Stephen's support obligations technically terminated on April 10, 1985, when Brenda turned 18 years old. On August 16, 1985, the trial court entered an order, pursuant to information provided by the Child Support Recovery Unit, stating that Stephen's past due child support obligations had been paid and that Brenda had become emancipated. The trial court order terminated all wage assignments. Such order covered both past and current payments.

Brenda became a student at Monmouth College in the fall of 1985. However, it was not until June 30, 1987, that the Child Support Recovery Unit filed an entry of information regarding Brenda's educational status and requested a mandatory income withholding in the amount of $4,442.91. There was no attempt to make a showing that the circumstances set forth in section 598.1(2) applied, nor any attempt to modify to require the continuing of support. Unlike the petitioner in Pieper, who applied for a modification only one and one-half months after child support obligations ceased, Betty waited over two years after the trial court had found Brenda emancipated.

Under the circumstances we believe the trial court was correct in quashing the mandatory income withholding absent a petition to modify the trial court's order terminating child support obligations.

AFFIRMED.