FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LINDA L. BALTES AND HAROLD L. BALTES

Upon the Petition of)

LINDA LOIS BALTES,)

Petitioner-Appellant,)

And Concerning)

HAROLD L. BALTES,)

Respondent-Appellee.)

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Filed November 26, 1986

6-404
86-239

Appeal from the Iowa District Court for Chickasaw County (5-34) - James C. Bauch, Judge.

Petitioner wife appeals from a modification of the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Terry Diane Parsons of Olsen, Parsons & Ament, Cedar Falls, Iowa, for petitioner-appellant.

Christopher F. O'Donohoe of O'Donohoe, O'Connor & O'Donohoe, New Hampton, Iowa, for respondent-appellee.

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

HAYDEN, J.

Petitioner-appellant, Linda Lois Baltes, and respondent-appellee, Harold L. Baltes, were married from October 1968 through January 1985. Four children resulted from this union: Michelle, age seventeen; William, age fifteen; Aaron, age eleven; and Jenny, age ten.

On January 14, 1985, the district court entered a decree of dissolution incorporating the parties' stipulation and settlement. The decree provided for joint custody of all the children, with physical care given to petitioner. Child support was ordered in the amount of $450 per month, to be reduced proportionately as the children reached the age of majority.

William Baltes resided with respondent from mid-March through mid-June 1985 when he returned to petitioner's home. Michelle Baltes has resided with respondent from March 25, 1985, to the present. From January through June 1985, Harold L. Baltes paid $450 per month as support; but from July through November 1985 he paid $225 per month.

On April 2, 1985, respondent filed an application for modification. At the modification hearing Michelle's physical care and child support were the only two issues in dispute. As a result of this hearing, the district court amended the prior decree to transfer Michelle's physical care to respondent. The court also reduced respondent's support from January 1, 1985, through January 1, 1989, to $337.50 per month and required petitioner to pay $112.50 per month in support to petitioner. In the decree, both parties were required to pay future support when and if the children attended college. Finally, the court gave respondent a credit of $1,350.00 against future support, reducing his monthly child support obligation by $50 per month until fully paid. Petitioner appealed said order.

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Since dissolution modification actions are equitable proceedings, our review is de novo. Iowa Code § 598.3 (1985); Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). As with all dissolution cases, precedent is of little value and therefore our decision must ultimately depend on the particular facts relevant to each issue. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984); In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976), modification denied, 378 N.W.2d 735 (Ct. App. 1985).

I.

The party seeking physical care has the burden of showing by a preponderance of evidence that conditions, since the dissolution decree was entered, have so materially and substantially changed that the children's best interest would be best served by changing physical care. In re Marriage of Jerome, 378 N.W.2d 302, 304 (Iowa Ct. App. 1985). Also, "a finding that one of the parents can minister more effectively to the routine daily needs of the children is an essential predicate to an award of physical care." In re Marriage of Frederici, 338 N.W.2d 156, 160 (Iowa 1983).

The record from the modification hearing clearly shows the relationship between Michelle and petitioner has broken down. This change leads us to believe her best interests can most effectively be served through the continued physical care by the father. Therefore, the trial court decision regarding Michelle's custody and visitation is affirmed.

II.

The petitioner contends the modification decree rendered support payments inequitable. We agree and modify.

In order to reach a reasonable determination regarding support, we consider the parties' age, present earning capacity, future prospects, amount of resources

owned by the parties, contribution to the joint accumulation of possessions, the children, duration of the marriage, indebtedness of each, and all other relevant factors. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). It is well established both parents have an obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976); In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa Ct. App. 1984). Due to Iowa Code section 597.14 (1985), which provides the reasonable and necessary expenses of the family are chargeable to the property of both husband and wife, the same legal obligations for child support rest upon both husband and wife, not necessarily equally but proportionately according to their ability and circumstances. In re Marriage of Carney, 206 N.W.2d 107, 112 (Iowa 1973); In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa Ct. App. 1984).

In the modification decree the court ordered respondent to pay petitioner $337.50 per month and petitioner to pay respondent $112.50 per month, we agree with this portion of the decree. However, we consider the court's commencement date for both of these payments, January 1, 1985, inequitable. We modify to make the date of the filing of the petition to modify, April 2, 1985, the date on which both payments begin. We also consider the district court's award of $1,350.00 credit for future child support unwarranted and inequitable, said provision is stricken from the decree. In summary, regarding the support award: petitioner shall pay respondent $112.50 per month, commencing April 2, 1985, until Michelle reaches age 18; respondent shall pay petitioner $337.50 per month until the children reach majority; and no credit shall be allowed respondent regarding past child support.

III.

The district court ordered both respondent and petitioner to pay support

to the children when and if they attend higher education. We consider this demand premature.

An award of college expenses as a form of support is sanctioned by Iowa Code section 598.1(2) (1985). Under our law support must end when a child reaches eighteen unless the evidence establishes that a statutory provision, such as 498.1(2) applies. In re Marriage of Byall, 353 N.W.2d at 107. Section 598.1(2) imposes an obligation on divorced parents toward their adult offspring to support them while they are attending college. Id. We consider the best approach to seek modification of the order when the emancipated child has decided to pursue higher education. The trial court has continuing authority to modify the child support order. In re Marriage of Pieper, 369 N.W.2d 439, 441 (Iowa 1985). We modify the trial court's order to provide support for all four children; $337.50 per month from respondent, and $112.50 per month from petitioner, until each child respectively obtains the age of 18, marries, or becomes self-supporting, but to continue in any event until such child completes his or her high school education. If and when any child desires to continue schooling, past majority, either party may petition the trial court to provide additional support.

AFFIRMED AS MODIFIED.

Donielson, P.J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur with the majority in part but I cannot agree with their decision to strike support for education beyond high school.

The trial court provided in its decree support should continue at the rate of $112.50 per month for any child[1] over 17 but under 22 who is attending an educational institution as a full-time student. Such an extension of support is provided for under Iowa Code §598.1(2). Neither party challenges the extension of child support, however, the majority on its own motion has eliminated support beyond age 18.

An extension of support to college in the original decree can be made by the trial court and is in accordance with accepted practice in this state. Such an award was proper in this case. There is no basis for waiting to make an award until the child is ready for college. Such a holding puts the burden of a modification action on the parties and the Iowa courts. The issue can and should be resolved where possible at the time of the decree.

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[1] The support also terminates if the child dies or marries.