FILED
FEB 23 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANN MAUREEN KIMBALL
AND RICHARD DALE KIMBALL

Upon the Petition of)
ANN MAUREEN KIMBALL,)
Petitioner-Appellant,)
And Concerning)
RICHARD DALE KIMBALL,) 8-657 / 88-772
Respondent-Appellee.)

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Appeal from the Iowa District Court for Black Hawk County (29695), James L. Beeghly, Judge.

Petitioner appeals from the district court's refusal to modify the decree of dissolution. **REVERSED AND MODIFIED.**

L. Don Snow of Mershon, Snow & Knock, Cedar Falls, for petitioner-appellant.

Peter J. Gartelos of Gartelos & Wagner, Waterloo, for respondent-appellee.

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

HAYDEN, J.

In 1981 the parties' marriage was dissolved. The parties' three minor children were placed in custody of petitioner. The respondent's child support payments were to terminate upon the respective children's eighteenth birthdays. No provisions in the decree provided for child support in the event any of the children decided to obtain education or training beyond high school.

In 1985 the decree was modified to transfer one of the children to respondent.

In 1987 Ann filed the present petition asking the decree be modified to require Richard to pay child support past the children's eighteenth birthdays if the children pursued higher education. Ann asserted one of the two children, Katherine, entrusted to her custody was enrolled in college in 1987, and the other might attend college later.

The district court denied Ann's request for a modification. The district court held Ann had not established a change of circumstances and had not established she needed additional support. The district court indicated college expenses should have been anticipated by the parties at the time of the 1985 modification proceeding.

Our review is de novo. Iowa R. App. P. 4.

There is no indication by either party in either of the prior proceedings Katherine ever contemplated schooling,

training, or education beyond high school. Their daughter, Katherine, became eighteen years old several months before she graduated from high school in May 1988.

Iowa Code section 598.1(2) provides in pertinent part:

> **"Support"** or **"support payments"** means any amount which the court may require either of the parties to pay under a temporary order or a final judgment or decree, and may include . . . child support . . . and any other term used to describe such obligations. Such obligations may include support for a child who is between the ages of eighteen and twenty-two years who is regularly attending an approved school . . ., or is, in good faith, a full-time student in a college, university, or area school; or has been accepted for admission to a college . . . .

The Iowa Supreme Court, in the case of In re Marriage of Byall, 353 N.W.2d 103 (Iowa 1984), held the statute imposes an obligation on divorced parents toward their adult offspring to support them while they are attending college.

In In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980), our supreme court stated section 598.1 of the Iowa Code does not require such support in all cases. It allows the district court, in its discretion, to award support of the children through college under the proper circumstances and stated the factors to be considered are the financial conditions of the parents, ability of the child for college work, age of the child, and whether the child is self-sustaining or not.

We have authority to modify a support decree to include college expenses of children if the conditions in section

598.1(2), the Code, relating to education are met. See In re Marriage of McFarland, 239 N.W.2d 175, 180 (Iowa 1976).

The record supports the trial court's finding:

> Petitioner's annual income is $6,873.00; Respondent's annual income is $34,700.00 and Respondent's wife's income is $14,700.00 per year net. Respondent has one child from his second marriage.

We reverse the trial court and determine respondent shall pay the sum of $140 per week child support for the two children, Katherine and David, so long as the conditions of section 598.1(2) are met.

Both parties have requested attorney fees on appeal. Richard shall pay Ann the sum of $500 to apply upon her appellate attorney fees. The clerk of Black Hawk County District Court is directed to enter judgment against Richard for that amount. Costs of appeal are taxed to Richard.

REVERSED AND MODIFIED.