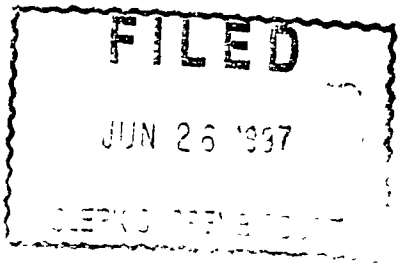
IN THE COURT OF APPEALS OF IOWA

No. 7-153 / 96-780

000307

IN RE THE MARRIAGE OF JENNIFER D. LONG AND JOSEPH E. LONG, JR.



Upon the Petition of
JENNIFER D. LONG n/k/a JENNIFER D. GRAF,

Appellee,

And Concerning
JOSEPH E. LONG, JR.,

Appellant.

Appeal from the Iowa District Court for Clinton County, J. Hobart Darbyshire, Judge.

Appellant appeals the entry of a ruling modifying a dissolution decree.

AFFIRMED AS MODIFIED.

John J. Wolfe, Clinton, for appellant.

James Pillers of Pillers, Pillers & Zimmerman, P.C., Clinton, for appellee.

Considered by Habhab, C.J., and Cady and Vogel, JJ.

VOGEL, J.

Respondent Joseph Long, Jr. appeals a district court order modifying the parties' dissolution decree to increase the amount of child support Joseph must pay while his youngest son attends college. We affirm as modified.

Joseph and Petitioner Jennifer Graf were married and had three children together. The youngest child, Steven, turned eighteen on August 8, 1995. At the time of trial, he planned to attend college and has been accepted at the University of Northern Iowa. Since the dissolution, Joseph and Jennifer have both remarried. Joseph has three minor children with his current wife, and Jennifer has a teenage son with her current husband.

On December 3, 1979, the district court filed its decree dissolving the parties' marriage. After two modifications, Joseph's child support obligation was set at $60 per week for the support of Steven, plus $30 per week toward an arrearage of approximately $9,000. The modification order provided the support would cease when Steven turned eighteen, but would continue if he were a full-time student pursuing a college education.

Jennifer filed an application to modify the decree to extend the duration of child support and increase the amount, alleging among other things Joseph's income had substantially increased such that the amount of support currently due under the child support guidelines deviated from the current amount by at least twenty percent.

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Following a hearing, the district court modified the decree to increase Joseph's child support obligation to $650 per month, retroactive to July 27, 1995. The ruling provided the support would continue as long as Steven was a full-time student, but in any event would cease on Steven's twenty-second birthday. The court looked to the child support guidelines for guidance, which provided support of $826 per month. The court examined the parties' financial affidavits and exhibits, including Jennifer's testimony that Joseph is under some financial stress, and concluded the amount Jennifer requested was reasonable given the parties' ability to pay and Steven's need for assistance.

Joseph raises two arguments on appeal. First, he claims the district court erred by ordering the support retroactive to the date of filing of the modification application, instead of the date he was served. Second, he argues the amount of support is excessive because Jennifer and Steven have financial resources with which to pay the costs of a college education.

Our review of the trial court's decision on the modification petition is de novo. *In re Marriage of Lee*, 486 N.W.2d 302, 304 (Iowa 1992). The trial court's findings of fact are entitled to weight, but they are not binding upon us. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996) (citing Iowa R. App. P. 14(f)(7)).

I. Retroactivity

The district court provided its order would be retroactive to July 27, 1995, the date of filing. Joseph argues the court could only order retroactive payments to

August 23, 1995, the date he was served. Jennifer concedes the district court was limited to the date of service when ordering retroactive support payments. We therefore modify the district court's order to provide the support payments are retroactive only to August 23, 1995. *See* Iowa Code § 598.21(8) (1995) (providing a court may retroactively modify a child support judgment only from the date notice is served on the opposing party).

II. Amount of Support

Joseph does not challenge the amount of support between August 23, 1995, and May 28, 1996, the date Steven graduated from high school. He attacks the support following this date because it requires him to finance 87% of Steven's total college costs of $8.923 and does not consider the ability of Jennifer and Steven to contribute to these costs.

To determine whether an amount of support is reasonable, we must examine the parents' financial resources and the child's educational needs. *In re Marriage of Lieberman,* 426 N.W 2d 683, 685 (Iowa App. 1988). To reach a just and equitable determination of the level of support, we consider the age of the parents, present earning capacity, future prospects, amount of resources the parents own, the duration of the marriage, each parent's level of debt, and any other relevant factors. *In re Marriage of Byall,* 353 N.W.2d 103, 107 (Iowa App. 1984).

Applying the list of factors, we believe the amount of support is reasonable, fair, and equitable. Joseph earns approximately $71,000 per year. In contrast,

Jennifer earned $6,324 in 1995, working part time. Joseph's income is substantial, even considering his support of his current wife and three children. As Steven will turn twenty-two on August 8, 1999, Joseph's support obligation will exist for only three years of Steven's college education. We find the $650 per month ordered is reasonable.[1]

AFFIRMED AS MODIFIED.

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[1]This case was tried prior to the 1997 enactment of Iowa Code section 598.21(5A) which provides: "The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education."