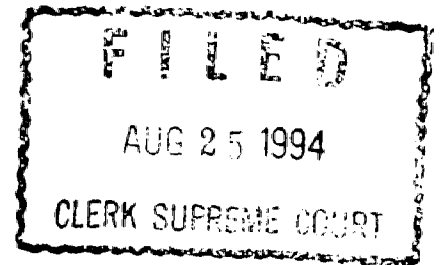


IN THE COURT OF APPEALS OF IOWA

No. 3-538 / 92-2013



IN RE THE MARRIAGE OF JON C. EBERSOLE AND CARA L. EBERSOLE

Upon the Petition of
JON C. EBERSOLE,

Appellant,

And Concerning
CARA L. EBERSOLE,

Appellee.

Appeal from the Iowa District Court for Tama County,
Van D. Zimmer, Judge.

Jon Ebersole appeals the district court's enforcement
of his dissolution decree. **AFFIRMED.**

Donald G. Juhl, Nevada, for appellant.

Dennis D. Appelgate of Mickelson, Roan, Appelgate &
Kenkel, Toledo, for appellee.

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

HAYDEN, P.J.

In this case, Jim Ebersole seeks child support for higher education expenses from his father, Jon Ebersole. The trial court directed Jon to contribute funds towards Jim's 1992-93 college expenses. Jon appeals. Jon contends Jim's behavior towards him relieves him of any responsibility for support and he is entitled to a new trial due to allegedly false statements made by Jim regarding his income. Having found no reason to reverse, we affirm the trial court decision.

In the trial court, Jim filed a petition for enforcement of his father's and deceased mother's dissolution decree. The decree incorporated a stipulation the "Ebersole Family Trust" would be created for the support of the children and their mother. There was also a provision stating Jon should contribute to the children's educational expenses if any of them attended college.

Jim was twenty-one years of age at the time of the hearing on his enforcement petition. He testified he was attending the University of Northern Iowa and needed financial support for the 1992-93 academic year. He testified the money he received from the trust was not enough to cover his expenses and he needed a contribution from his father.

Jon testified he did not have an automatic obligation to pay Jim's college expenses and available funds from the trust must first be taken into account. He then presented

evidence the trust fund could provide the additional support for Jim. He also asserted Jim's summer employment had made him self-sustaining.

The trial court determined although the trust fund could provide additional financial support for Jim, the original stipulation also contemplated Jon would contribute to college expenses. Jon was ordered to pay \$2100 toward Jim's college expenses.

Jon filed a motion for a new trial alleging Jim had presented materially and substantially false information at trial about his summer employment and income. The motion was overruled.

Jon appeals. For the reasons set out below, we affirm.

To begin, Iowa Code section 598.1(6) identifies the financial obligations a court may impose on either parent under a decree of dissolution for the support of a child. The obligations may include support for higher education expenses. Id. Jon is correct in stating the statute does not require college support in all cases. Rather, it allows the trial court, in its discretion, to order support of children through college under the proper circumstances. In re Marriage of Vrban, 293 N.W.2d 198, 202 (Iowa 1980). College support is thus discretionary, not mandatory under Iowa law.

Jon places a great deal of reliance on the recent decision in In re Marriage of Baker, 485 N.W.2d 860 (Iowa

App. 1992). In Baker, this court found the equities of the case required a conclusion an award of child support was not proper. Id. at 862. The facts of Baker are easily distinguishable from the instant case, however.

In Baker, the children publicly disavowed their father. Id. at 862. The children refused to acknowledge their father in any way. Id. They refused to invite their father to their high school graduation and other community activities. Id. They refused to greet or acknowledge their father whenever they met him in public. Id. They did not inform their father they were attending college until they looked to him for support. Id. They alienated themselves in every way from their father Id. Under such circumstances, this court held the children in Baker had disenfranchised themselves as prospective beneficiaries under Iowa Code section 598.1(2). Id. at 863 (now codified at Iowa Code § 598.1(6) (1993)).

The facts of the instant case are a far cry from the egregious conduct in Baker. In the instant case, there is some animosity between father and son, but nothing near the public disavowal which occurred in Baker. In the instant case, there was a family feud between Jim's father and his aunt, and Jim did appear to side with his aunt. Additionally, Jim, as a witness in the trial court, stated his father never really helped him financially, despite the existence of the aforementioned trust fund. But these slights do not come close to the extreme and outrageous

conduct of the children in Baker. There was no evidence in the instant case Jim publicly disavowed his father, or refused to speak to him, or did not invite him to events, or in any way alienated himself from his father as the children did in Baker. Jim has not disenfranchised himself as a prospective beneficiary under Iowa Code section 598.1(6).

Nor do we find the trial court erred in overruling Jon's posttrial motion for a new trial. We allow a trial court broad but not unlimited discretion in ruling upon motions for new trial, and will only reverse its determination upon a finding that it has abused its discretion. McConnell v. Aluminum Co. of Am., 367 N.W.2d 245, 248 (Iowa 1985) (citations omitted).

Jon claims he is entitled to a new trial here due to allegedly false claims Jim made regarding his income. Iowa Rule of Civil Procedure 244(b) does provide a party who has received an adverse decision may move for a new trial if the prevailing party has engaged in misconduct. Looking at the record, we are not at all certain any false statements were made. Assuming false statements were made, we are satisfied they did not materially affect Jon's substantial rights, as required by Iowa Rule of Civil Procedure 244(b). Under these facts, there is no abuse of discretion.

The trial court is affirmed.

AFFIRMED.