IN THE COURT OF APPEALS OF IOWA

No. 0-441 / 89-1536

IN RE THE MARRIAGE OF MAURICE A. VILLENEUVE AND MARY VILLENEUVE

Upon the Petition of

MAURICE A. VILLENEUVE,

Appellant,

And Concerning

MARY VILLENEUVE,

Appellee.

FILED
DEC 27 1990
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Carroll County, Paul E. Hellwege, Senior Judge.

Husband appeals claiming the child support obligation to be paid by noncustodial wife is inadequate. **AFFIRMED AS MODIFIED.**

Ronald F. Eich, Carroll, for appellant.

Bruce Becker, of Vest, Becker & Murray, Sac City, for appellee.

Considered by Oxberger, C.J., and Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Maurice and Mary Villeneuve's marriage was dissolved by decree in 1980. One child, Bridget was born of the marriage in October 1969. The dissolution decree placed the child in joint legal custody and in Maurice's primary physical care. The decree did not order Mary to pay any child support because at the time Mary was unemployed and had no income.

The decree gave Maurice possession of the marital home until Bridget reaches twenty-one years of age, at which time Mary is to receive $10,000 for her equity in the house. Mary is currently employed earning approximately $17,500 per year. Maurice has remarried and has two young children from the marriage. Maurice earns approximately $29,700 per year and his wife earns approximately $22,270 per year.

In 1989 Maurice filed an application to modify the dissolution decree, asking that Mary be required to pay child support. As changes of circumstances, he alleged Mary is now employed and Bridget is now incurring college expenses.

The district court directed Mary to pay child support of $50 per month for nine months per year so long as Bridget is enrolled in college and otherwise qualifies for support.

Maurice has appealed the district court's modification order. He contends Mary's child support obligation should be larger. He also argues the support obligation should continue during the summer months and should be made retroactive to the date he filed the modification petition.

Mary requests attorney fees on appeal.

We review this equity case de novo. Iowa R. App. P. 4. We find Mary's employment and the child's enrollment in college to be a significant change of circumstances warranting modification of the original child support obligations. Iowa Code section 598.1(2) allows the to imposition of support obligations on divorced parents toward their children's college education. The obligation to provide college support extends to both parents. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984). In assessing the support obligation, we consider the parties' age, present earning capacity, future prospects, amount of resources owned by each or both parties, and any other relevant factors. Id. (citing Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976)).

The child support guidelines promulgated by the supreme court do not apply to the determination of support for an unmarried adult under twenty-two years of age who is a student. In re Marriage of Linberg, 1990 WL 180255, N.W.2d ___, ___ (Iowa App. 1990). After evaluating each parties' position, we determine $50 per month is not a

sufficient amount for Mary to contribute. We order Mary to pay $100 per month for the time the child remains qualified to obtain support. We order this support obligation to apply twelve months per year and to be retroactive to the date of the filing of the application for modification. See In re Marriage of Bonnette, 431 N.W.2d 1, 4-5 (Iowa App. 1988).

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

In light of each parties' position, we order each to pay his or her own attorney fees and tax the cost of this appeal to Mary.

AFFIRMED AS MODIFIED.