

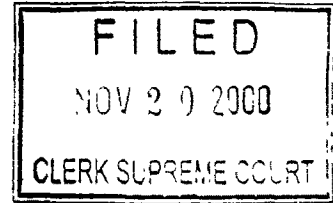
IN THE COURT OF APPEALS OF IOWA

No. 0-676 / 00-677
Filed November 20, 2000

**IN RE THE MARRIAGE OF CARLA G. RICH
AND JOHN H. RICH**

**Upon the Petition of
CARLA G. RICH,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
JOHN H. RICH,**
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Tama County, William R. Eads,
Judge.

Petitioner appeals a district court order granting the respondent's petition
to modify the child support provisions of their dissolution decree. **REVERSED
AND REMANDED.**

Mark E. Mossman of Mossman & Mossman, L.L.P., Vinton, for appellant.

Joel T.S. Greer of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Carla and John Rich were divorced in July 1991. By stipulation, the parties were awarded joint legal custody of their three children, Justin, Crystal, and Richard. Carla was granted primary physical care of the children. The stipulation agreement also contained the following provisions:

3. Child Support. [John] shall make the following payments upon the following terms to [Carla] for the support, maintenance and education of the children:

a. The sum of \$500.00 per month. A child shall qualify for support until the child reaches the age of 18 or graduates from high school, whichever occurs last, provided, however, that child support shall continue for a child regularly attending an accredited school or vocational technical training to age 22, pursuant to Iowa Code Section 598.1(2). Child support shall terminate upon the marriage, death or emancipation of a child, should one of said events earlier occur.

* * *

e. Child support is currently based upon three children being eligible for support. At such time as only two children are eligible for support and again when only one child is eligible for support, child support shall be adjusted to a level of support based on the then-applicable Iowa Child Support Guidelines, as determined by the respective incomes of the parties and the number of children eligible for support. Each party shall provide the other with the prior year's tax return or other satisfactory information with respect to that party's income. A stipulation for modification shall be signed by both parties and presented to the court for approval. If an agreement cannot be reached, then either party may petition the court for a determination of support, which shall be retroactive to the applicable adjustment date. The court may assess reasonable attorney fees and court costs to a party refusing, without good cause, to provide financial information or enter into a modification agreement.

The parties' oldest child, Justin, turned eighteen on October 6, 1993. The parties discussed lowering John's support obligation on several occasions. Under John's version of the facts, in 1995 the parties agreed to lower his child

support payment to \$250 per month in exchange for Carla being allowed to claim two, as opposed to one, of their children as dependents for tax purposes. He testified that he believed Carla had submitted this modification for court approval. Carla, on the other hand, contends an agreement was never reached. No stipulation for modification or petition for determination of John's support obligations was ever presented to the court.

In accordance with the alleged agreement, however, John reduced his child support payment to \$250 per month. Carla never filed an application to enforce the decree or to collect arrearages. John claimed that he first became aware that the child support decree had not been modified in April 1999 when he received a letter from the State of Iowa, which notified him that his youngest son, Richard, had been placed in foster care and that his wages would be garnished for child support arrearages.

On September 1, 1999, John filed a petition to modify the decree, asking that child support be retroactively adjusted to reflect Justin's emancipation. In the alternative, he requested that the parties' oral agreement to step-down the child support to \$250 per month be enforced or that Carla be required to pay reimbursement child support to compensate for Justin and Richard no longer living in her house.

The district court determined that the above language of stipulation resulted in an automatic one-third step-down in child support payments upon Justin's eighteenth birthday and, therefore, no modification was required. Carla appeals, arguing the court erred in determining that child support should be reduced pro rata and retroactive to Justin's eighteenth birthday. Moreover, Carla

asserts that the court should have granted an increase in support based on the current incomes of the parties. John cross-appeals, arguing the court erred in failing to award reimbursement child support or attorney fees to be paid by Carla.

II. Standard of Review.

In this equity action, our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Smiley*, 518 N.W.2d 376, 378 (Iowa 1994). We give weight to the fact findings of the trial court, especially considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value; we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

III. The Merits.

We agree that the district court improperly interpreted the stipulation. A stipulation, when incorporated into the dissolution decree, became the court's language. *In re Marriage of Sylvester*, 412 N.W.2d 624, 627 (Iowa 1987). Our supreme court has stated:

Although a stipulation of settlement in a dissolution proceeding is a contract between the parties, it becomes a final contract when it is accepted and approved by the court. When the stipulation is merged in the dissolution decree it is interpreted and enforced as a final judgment of the court, not as a separate contract between the parties.

In re Marriage of Lawson, 409 N.W.2d 181, 182 (Iowa 1987) (citations and quotation marks omitted).

A decree is to be construed as other written documents; the determining factor is the intention of the court as gathered from all parts of the judgment. *In re Marriage of Antisdel*, 478 N.W.2d 864, 866 (Iowa App. 1991). Effect must be given to that which is clearly implied as well as to that which is expressed. *Lawson*, 409 N.W.2d at 182. Courts must strive to give effect to all the language of a contract. *Id.* at 182-83. Because an agreement is to be interpreted as a whole, it is assumed in the first instance that no part of it is superfluous; an interpretation that gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation that leaves a part unreasonable, unlawful, or of no effect. *Antisdel*, 478 N.W.2d at 866.

While we agree with the district court that the stipulation gives a right to decrease child support payments at the occurrence of one of the triggering events, we do not agree that this step-down occurs automatically. The stipulation unambiguously provides that upon an event excluding a child from support, the parties are to recalculate child support based on their current incomes and current child support guidelines. The stipulation further provides that when an agreement cannot be reached, the parties should seek relief by petitioning the court for a determination of support. Any relief sought through the court will be awarded retroactively. Any party unnecessarily holding up the process by refusing to provide financial information without good cause is to be assessed reasonable attorney fees and court costs.

This language clearly and unambiguously outlines the proper procedure for requesting a step-down. The procedure requires the parties to seek aid from the court should they not be able to come to an agreement and that any relief

given should be applied retroactively. It also requires the amount of support be recalculated based on current incomes and the current child support guidelines; it does not provide for a pro rata reduction. These were the provisions the parties negotiated for and it would be improper for the courts to alter them. See *Mopper v. Circle Key Life Ins. Co.*, 172 N.W.2d 118, 124 (Iowa 1969) (noting that it is the duty of the courts to give effect to the language of the contract in accordance with its plain and ordinary meaning, and not make a new contract for the parties). We find the record insufficient, however, to make these calculations. We therefore reverse and remand this issue to the district court for further proceedings to determine the appropriate child support using the parties' 1993 income and the child support guidelines as they existed in 1993.

John requests both trial and appellate attorney fees. We find the parties also stipulated to the proper resolution of this matter. The stipulation provided that "[t]he court may assess reasonable attorney fees and court costs to a party refusing, without good cause, to provide financial information or enter into a modification agreement." Again we find the record insufficient to determine whether Carla's refusal to enter into a modification agreement was without good cause. We, therefore, also reverse and remand this issue to the district court for further proceedings.

REVERSED AND REMANDED.