

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE MARRIAGE OF
JACQUELINE THILL AND RUDOLF THILL

FILED

MAR 09 1988

CLERK SUPREME COURT

Upon the Petition of	)	
JACQUELINE THILL,	)	Filed March 9, 1988
Petitioner-Appellee,	)	
And Concerning	)	<u>7-593</u>
RUDOLF THILL,	)	87-297
Respondent-Appellant.	)	

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Appeal from the Iowa District Court for Polk County (CD 1817), Ray Hanrahan, Judge.

Respondent appeals two district court rulings regarding child support for his and his ex-wife's child. **AFFIRMED.**

Marlyn S. Jensen, Osceola, for respondent-appellant.

Dennis J. Kirkwood of Kirkwood & Meade, Des Moines, for plaintiff-appellee.

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

HAYDEN, P.J.

Respondent, Rudolf Thill, appeals two district court rulings regarding child support for Stephen Thill, the son of Rudolf and petitioner, Jacqueline Thill (now Berguin). Rudolf asserts the district court lacked subject matter jurisdiction to order him to pay educational child support until Stephen is twenty-two years old, as long as Stephen is enrolled in college. Rudolf also contends this award of support and the award of attorney's fees were unreasonable under the circumstances. Rudolf's final assertion is that the district court erred by denying his application for reimbursement for past child support he provided when he had sole custody of Stephen. We affirm.

This case arises from the decree, filed October 1, 1971, dissolving the parties' marriage. The decree granted sole custody of Stephen to Rudolf and reserved the question of the payment of child support by Jacqueline. In 1984, this question was addressed and Jacqueline was ordered to pay child support. Thereafter, in 1985, Jacqueline sought a modification, resulting in an award of joint custody by the parties of Stephen, with Jacqueline being granted physical care and Rudolf being ordered to pay child support. In 1986, Jacqueline sought another modification of the decree, requesting that Rudolf be ordered to pay child support for Stephen's college expenses. Rudolf resisted this modification application and, additionally, requested reimbursement for half of the support expenses he incurred when he had sole custody of Stephen and Jacqueline paid no child support. These issues were tried separately. On January 23, 1987, the district court granted Jacqueline's modification application and on June 10, 1987, the court granted Jacqueline's motion for summary judgment on Rudolf's Application for Order for Judgment for Child Support. The court also awarded her attorney's fees. This consolidated appeal followed.

I. Educational Child Support. Rudolf's first challenge to the district court's award of educational child support is that the court lacked subject matter jurisdiction to make such an award. He contends the law at the time the decree was filed applies and that law did not provide for child support for college expenses. We note he did not raise this issue at trial. Our inquiry begins, therefore, with the question of whether this issue is truly one of subject matter jurisdiction, thereby allowing it to be first raised on appeal.

In In re Marriage of Pieper, 369 N.W.2d 439 (Iowa 1985), our supreme court determined the question of whether the child support provisions in a dissolution decree could be modified to provide for college expenses where the original payments were completed and the child had reached majority was a matter of a rule of law, not of jurisdiction. Id. at 440-41. We conclude the same reasoning applies in this case. Assuming, arguendo, the applicable law is that which was in effect at the time the decree was filed, the issue here is whether, under that law, child support for college expenses beyond the child's majority could have been awarded prior to the attainment of majority by the child. Thus, the issue is to be resolved by determining the scope of the statute which authorized child support in 1971; however, the jurisdiction of the court is not questioned.

Our conclusion that this issue is a matter of a rule of law precludes us, however, from addressing its merits, since it was not raised at trial. Shill v. Careage Corp., 353 N.W.2d 416, 420 (Iowa 1984).

Rudolf's other challenge to the educational child support award is it was unreasonable under the circumstances. He also challenges the award of attorney's fees and asserts the court erred by separating the issue of college expenses from his claim for reimbursement. He cites no authority for any of these propositions, so we deem them waived. Iowa R. App. P. 14(a)(3). In any event, we find the awards of child support and attorney's fees to have been reasonable.

II. Reimbursement of Past Child Support. Rudolf also asserts the district court erred by denying his application for reimbursement for half of the support expenses he incurred from 1971 to 1984. Jacqueline contends he is precluded from raising this claim since he failed to do so in 1984 when she was ordered to pay child support pursuant to the reservation for such action in the 1971 decree. She also contends Rudolf's claim is not truly for reimbursement, but rather is for retroactive modification of the decree.

As stated in Mulkins v. Bd. of Supervisors, 374 N.W.2d 410 (Iowa 1985), "an adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination." Id. at 414. A party must litigate all matters growing out of his claim at one time rather than in separate actions. Israel v. Farmers Mut. Ins. Ass'n., 339 N.W.2d 143, 146 (Iowa 1983).

The 1971 decree reserved the question of the payment of child support by Jacqueline. In 1984, Rudolf requested this issue be addressed and consequently Jacqueline was ordered to pay child support. This order was pursuant to the reservation in the decree. Rudolf now seeks reimbursement pursuant to the same reservation. Regardless of the merits of his request, we find he should have brought this claim when he sought child support from Jacqueline in 1984. We conclude he is precluded from doing so now.

III. Attorney's Fees. Jacqueline requests appellate attorney's fees. We conclude the parties shall be responsible for their own appellate attorney's fees.

AFFIRMED.