IN THE COURT OF APPEALS OF IOWA

No. 5-532 / 94-1348

IN RE THE MARRIAGE OF DENISE KAY PALMER n/k/a DENISE KAY PALMER-WIESE and TIMOTHY LEE PALMER

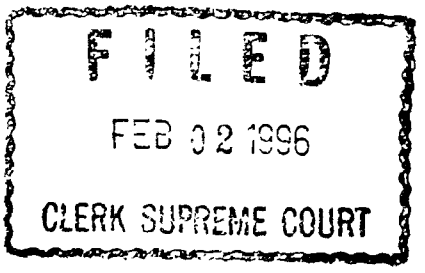
Upon the Petition of
DENISE KAY PALMER n/k/a DENISE KAY PALMER-WIESE,

Petitioner-Appellant,

And Concerning

TIMOTHY LEE PALMER,

Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Harry Perkins, Jr., Judge.

Petitioner appeals from a district court's denial of her petition for modification of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Frank M. Smith of the Frank M. Smith Law Office, Des Moines, for appellant.

Michele A. Gooding and Gale E. Juhl of the Juhl Law Office, Des Moines, for appellee.

Heard by Habhab, P.J., and Sackett and Cady, JJ.

HABHAB, P.J.

Denise and Tim Palmer were divorced on April 6, 1990. They have two minor children, Jessica, born January 25, 1987, and Travis, born January 24, 1989. The decree was based on the parties' stipulation. Denise and Tim were granted joint custody of their two children with primary physical care going to Denise. Tim was granted liberal visitation. Denise was awarded the marital home. Tim was ordered to pay child support in the amount of $35 per week per child based on the parties' financial affidavits. This amount translates to approximately $303 each month in child support. Tim's affidavit shows he earned a net monthly income of $997 from EMCO Specialties, Inc. Denise's gross monthly income from Midwest Power was $1875. Both parties subsequently remarried. Tim has one child who he supports from his second marriage.

In May 1991, Denise voluntarily left Midwest Power to concentrate on her family kennel business. Her estimated net monthly income in 1994 from this business was $769. This business was operated from her home. In addition, she found part-time employment with Neodata, which allowed her to work out of her home. She earned between $1017 and $2034 per year from this job.

On January 24, 1994, Denise filed a petition for modification of the decree claiming a substantial change in circumstances. She claimed Tim's income had increased since the decree, justifying an increase in child support. Tim argued his

income had not increased substantially and Denise had voluntarily reduced her income by quitting Midwest Power and entering the kennel business.

The district court concluded Denise had voluntarily reduced her income and therefore could not expect Tim to make up the difference. The court noted Tim's wage increases were only due to cost-of-living adjustments negotiated by his union and were not beyond the contemplation of the trial court at the time of the original decree. The district court further concluded Tim's monthly budget was reasonable under the circumstances and it would result in a substantial injustice to order Tim to pay child support according to the child support guidelines.

Denise appeals.

I. ***Scope of Review.*** Review is de novo since a petition for modification of child support is at equity. *In re Marriage of Powell*, 474 N.W.2d 531, 532 (Iowa 1991). We give weight to the trial court's factual findings but are not bound by them. *In re Marriage of Guyer*, 522 N.W.2d 818, 820 (Iowa 1994).

II. ***Modification of Child Support.*** Denise essentially has two arguments. First, she contends the district court erred in determining she voluntarily reduced her income. Second, she contends the district court erred in failing to modify Tim's child support obligation.

A request for a modification in child support should generally be granted if there has been a substantial lowering of earning power for a sustained period of time. *In re Marriage of Dawson*, 467 N.W.2d 271, 275 (Iowa 1991). This rule does not

apply when income is voluntarily reduced. *In re Marriage of Wahlert*, 400 N.W.2d 557, 561 (Iowa 1987). The district court found Denise had voluntarily reduced her income and thus was not entitled to a modification.

As it relates to Tim's argument that Denise's reduction in income was self-inflicted, our supreme court in *In re Marriage of Foley*, 501 N.W.2d 497 (Iowa 1993), stated:

> The self-infliction rule applies equitable principles to the determination of child support in order to prevent parents from gaining an advantage by reducing their earning capacity and ability to pay support through improper intent or reckless conduct. Iowa case law supports the proposition that in the determination of child support or modification of a support order, a party may not claim inability to pay child support when that inability is self-inflicted or voluntary.
>
> On the other hand, we have been willing to modify a decree when the noncustodial parent has been demoted with less salary, or has been discharged and could not become re-employed at a similar salary. Our court of appeals refused to penalize a parent who lost his job and refused to move 1200 miles to take another job with less security. It also refused to penalize a husband who was discharged from military service for his failure to comply with weight limits and no longer earned his military pay.

Foley, 501 N.W.2d at 500.

Denise, on the other hand, argues she left her job at Midwest Power so as to get away from a stressful working environment and to enable herself to provide more daily care for the children. We have previously recognized and respected a parent's decision to assume greater responsibilities in the children's daily care. *In re Marriage of Salmon*, 519 N.W.2d 94, 96 (Iowa App. 1994); *In re Marriage of Bonnette*, 492 N.W.2d 717, 721 (Iowa App. 1992). In addition to caring for the children and

reducing the family's child care costs, Denise is also earning an income by running the kennel business.

From our de novo review of the record, we agree with the trial court that Denise's reduction was self-inflicted. Thus, we must determine her net monthly income to arrive at the amount Tim is to pay for child support. In this respect, we impute to her her gross monthly earnings of $1875, which is the amount she earned at the time she voluntarily terminated her employment with Midwest Power.

It is the law in Iowa a ten percent deviation between the child support originally ordered and the child support calculated by the current uniform child support guidelines constitutes a substantial change in circumstances permitting modification of the child support obligation. Iowa Code § 598.21(9). The parties agreed in the original dissolution Tim would pay $303 each month for child support.

On our de novo review, we are obliged to apply the most current guidelines. *In re Marriage of Bolick*, ___ N.W.2d ___, ___ (Iowa 1995); *State ex rel. Epps by Epps v. Epps*, 473 N.W.2d 56, 58 (Iowa 1991). Tim's present gross monthly income is $1747.58. After deducting federal and state income tax and his social security obligation, union dues, dependent health insurance, and factoring in the "qualified additional dependent deduction" for one child of $90, we determine Tim's net monthly income to be $1219.81. After imputing to Denise a gross monthly income of $1875, and deducting her federal and state income tax liability, along with her social security obligation, her net monthly income is $1516.07. (According to the

court decree, she is entitled to take the two minor children as dependents on her tax returns.) Tim's monthly child support obligation is $365.94. This exceeds the ten percent difference needed to satisfy section 598.21(9). Accordingly, we conclude Tim's child support obligation must be modified to $365.94 each month.

We note the trial court did not have the benefit of the "qualified additional dependent deduction" when it made its determination. The Child Support Guidelines state:

> The qualified additional dependent deduction can be used for the establishment of original orders or in proceedings to modify an existing order. However, the deduction cannot be used to affect the threshold determination of eligibility for a downward modification of an existing order. After the threshold determination has been met, the deduction shall be used in the determination of the net monthly income.

After taking into consideration the qualified additional dependent deduction, we conclude there should not be a deviation from the guidelines.

III. ***Attorney Fees.*** Denise requests attorney fees for the trial and for legal expenses prior to trial. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). To reverse the trial court's decision regarding trial attorney fees, there must be a showing of an abuse of discretion. *Id.* We find the district court did not abuse its discretion in ordering both parties to pay their own trial attorney fees.

Denise also requests appellate attorney fees on appeal. 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 Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to 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. *Miller*, 524 N.W.2d at 445. We determine each party should pay his or her own attorney fees for this appeal.

Denise also asks that we invoke the "immediate income withholding" provisions of section 252D.8. We conclude the record is not sufficient for us to make a determination as to the applicability of that section. Thus, we remand this matter to the trial court for the limited purpose of making this determination upon proper application of Denise. We do not retain jurisdiction.

AFFIRMED AS MODIFIED.