IN THE COURT OF APPEALS OF IOWA

No. 2-125 / 91-1059

FILED
JUN 25 1992
CLERK SUPREME COURT

CARLA ANN TUCKER,

Appellant,

vs.

MAURICE HARRISON SMITH,

Appellee.

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Appeal from the Iowa District Court for Marshall County, Newt Draheim, Judge.

Carla appeals from district court rulings denying Maurice's application to modify decree and refusing to award Carla increased support and attorney fees. **REVERSED.**

Patrick L. Wilson, Marshalltown, for appellant.

John L. Butler and Michael A. Smith of Lundy, Butler & Smith, P.C., Eldora, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

Carla Tucker and Maurice Smith are the parents of two minor children. Carla and Maurice have never been married to each other.

In May 1984, the State, through the Department of Social Services, filed a petition under Iowa Code chapter 252A seeking reimbursement from Maurice for certain state payments for the children and a determination of future child support obligations. The case number for that action was 485U. Four months later, Carla filed a separate action (hereinafter Carla's action) for custody, support, and visitation concerning the minor children. Carla's action was case number 35749. In January 1985, the district court, in Carla's action, entered an order approving the stipulation and agreement of the parties. Approximately one month later, the court entered an order incorporating a second stipulation into the State's action, case no. 485U. The parties at the time of creating the stipulation for Carla's action recognized the pendency of the separate State action. The district court approved the parties' stipulation in case no 485U and ordered Maurice to pay child support of $50 per month per child and to reimburse the State $1,000.

In November 1987, Maurice filed a petition for modification in Carla's case, seeking more detailed visitation rights. In November 1988, the parties filed a

stipulation providing for more specific visitation and an increase of child support to $60 per child per month. The district court approved the stipulation and ordered the clerk to file a copy of the order in the State action. In February 1990, an amended order for mandatory income withholding was entered in the State action (485U) for current and past due support from Maurice. In January 1991, Maurice filed an application for modification. Maurice sought to pay child support of $120 per month with $20 of this sum applied to past due support. He also sought to be required to furnish Blue Cross insurance and to have his support obligation modified accordingly. Carla answered, seeking increased support and attorney fees. In May 1991, the district court entered its order, citing chapter 598, and denying Maurice's application to modify. Carla was not awarded increased support or attorney fees. Following posttrial motions, the district court entered a new order. The court first determined this case was a chapter 252A and not a chapter 598 action. The court then overruled Carla's motion to enlarge and amend. Carla has filed this appeal.

SCOPE OF REVIEW: This action is in equity and we find the facts anew; we give weight to the finding of the trial court but are not bound by them. Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1981); Iowa R. App. P. 4.

CHILD SUPPORT: We first consider whether the trial court was correct in determining the child support action was a matter within the purview of Iowa Code chapter 252.

The initial action in this case, Marshall County District Court Cause No. 485U, was a Chapter 252A case. A later stipulation in Carla's action for support in case number 35749, acknowledged and accepted that a separate determination of support had already been entered in the Marshall County action, case no. 485U. That later stipulation was incorporated into the court's order on January 18, 1985. No mention was made disputing the child support was determined under chapter 252A.

On November 4, 1988, however, the parties prepared a stipulation which was later incorporated by the court in an order dated November 4, 1988. The stipulation was filed under Carla's action, equity no. 35749. The stipulation provided in part:

> Child support shall be increased from $50.00 to $60.00 per child per month effective the 15th date of the month subsequent to the entry of the Decree. This modifies judgments in Marshall County Equity No. 35749 and No. 485U. (emphasis added).

Maurice argues that the Stipulation and Order which resulted in Cause No. 485U has controlled all contemporary and subsequent proceedings. We disagree. We find, according to the above stipulation, it was the parties' intent and the court's intent on November 4, 1988, to provide for child support pursuant to Carla's action under

case no 35749. From that date forward, child support pursuant to Iowa Code 252 was not controlling. As a result, it cannot be said that child support in this case is pursuant to Chapter 252. We find the circumstances and standards regarding review of child support which were provided within the court's January 18, 1985 order are controlling in the present case.

Although the amount of child support was modified in the November 4, 1988 court order, there is no mention of altering the court's prior January 18, 1985 decree regarding the circumstances in which future modification of child support could occur. The parties' stipulation for case no 35749, later incorporated by the court in its January 18, 1985, order provided:

> At a later time, if the Petitioner [Carla] is no longer a recipient of ADC and/or there has been a material and substantial change of circumstances not within the contemplation of the Court at the entry at the time of the Order in this case, each party has the right to have the child support reviewed. (emphasis added).

We find nothing in the record which indicates any action by the court that modifies this provision for review of child support. Courts are bound to enforce stipulations which parties may validly make where they are not unreasonable or against good morals or sound public policy. See Estate of Clark v. Lundy, 181 N.W.2d 138, 142 (Iowa 1970). A stipulation, such as the one central to this appeal, is entitled to all the sanctity of an ordinary

contract. Id. at 143. We find the stipulation above which was later incorporated into the court's decree is a valid and binding stipulation. There are consequently two circumstances which allow for review. First, when Carla is no longer receiving ADC. Second, when a material and substantial change of circumstances exists.

In the present case, Carla Tucker is no longer receiving ADC. This alone, according to the parties' stipulation incorporated into the court's January 18, 1985 decree is sufficient to trigger a review of the child support. We find, according to the stipulation and its "and/or" language, that so long as Carla is no longer receiving ADC, the court may modify at its discretion. We find the stipulation provides that in the event Carla was receiving ADC payments, a modification could still take place, providing there was a material and substantial change in circumstances.

Carla may also, according to the court's decree, seek a review of the child support upon a showing of a material and substantial change in circumstances. The record indicates Maurice owns a remainder interest in a 300-acre tract of land in Grundy County, Iowa. Maurice is finished with his education. He is employed as a licensed practical nurse at Williamsburg Care Center. He has a health insurance plan available through his employment to cover the children. We find there is a substantial and material

change in circumstances sufficient to warrant a modification according to the parties' stipulation which was incorporated into the court's decree.

The trial court refused to modify the child support reasoning this matter did not come within the purview of Iowa Code chapter 598. We find this reasoning overlooks the court's authority to modify pursuant to the parties' own stipulations.

According to the trial court's findings, Maurice's monthly net income is $740.76. Carla's net income is $611.88. We apply the Uniform Child Support Guidelines to these findings of fact. Accordingly, we direct Maurice to pay $240.75 per month child support until Jessica reaches the age of eighteen. At that time, Maurice is instructed to pay $168.00 per month child support until Jared reaches the age of eighteen. This support is ordered retroactive to the date of filing of the application for modification filed by Maurice. See Willcox v. Bradrick, 319 N.W.2d 216, 219 (Iowa 1992)(right to modification dates from the time of the application). This does not foreclose a future modification in the event the children elect to further their education beyond high school.

Each party shall pay his or her own attorney's fees associated with this appeal. Costs are taxed to the appellee.

REVERSED.