FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-208 / 93-1103

IN RE THE MARRIAGE OF BARBARA ANN ANDERSEN AND DAVID CHARLES ANDERSEN

Upon the Petition of
BARBARA ANN ANDERSEN,

Appellee,

And Concerning
DAVID CHARLES ANDERSEN,

Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Respondent appeals various child support provisions of the district court's modification decree. **AFFIRMED AS MODIFIED.**

Mark H. Rettig of Hines, Pence, Day & Powers, P.C., Cedar Rapids, for appellant.

Jonathan B. Hammond of Lane, Hammond & Broz, Cedar Rapids, for appellee.

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

HAYDEN, P.J.

David and Barbara Andersen were divorced on December 21, 1984. Pursuant to the decree, David was granted physical custody of Justin, born in 1971, and Barbara was granted physical custody of Jay, born in 1970, and Amy, born in 1977. David was ordered to pay child support in the amount of thirty dollars per week for Amy until 1988, at which time support was to be suspended until 1990, at which time it was to be reinstated and continue until December 31, 1995. The decree was thereafter modified in 1991, at which time David was awarded physical custody of Amy and Barbara was ordered to pay $18.75 per week child support.

Barbara filed the present action for modification on March 4, 1993. The parties stipulated custody of Amy should be transferred back to Barbara. The only issues at trial were the level of David's child support, the effective date of the new child support order, and the matter of the parties' future obligations for Amy's college expenses. At trial, Barbara testified her new husband lost his job in Cedar Rapids and she remained in the home without work. David was ordered to pay Barbara $69.47 per week child support beginning March 5, 1993, and continuing each Friday thereafter until Amy turns eighteen. The trial court determined the applicable percentage of David's income to be paid as child support was 25.1 percent, given Barbara's monthly income of $238. The district court also

ordered David to pay Amy's college education expenses. David appeals.

David argues the district court erred in fixing the periodic child support obligation of $69.47 per week. David argues the district court did not consider Barbara's income potential, only what she was earning at the time of the hearing. David points out Barbara could easily earn more money, but chose instead to stay home. David asserts since Amy is nearing graduation from high school, Barbara is not needed at home. David additionally argues the trial court's order requiring him to pay Amy's college expenses is premature, since she has not applied to any college. David further contends the trial court erred in ordering him to be the sole provider for Amy's college expenses instead of ordering both of them to contribute based on their respective incomes.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

There are three issues on appeal. The first issue is whether the trial court failed to do equity in computing David's periodic child support obligation for Amy. The

second issue is whether the trial court's order establishing an award for Amy's college expenses was premature or inequitable. The third issue is whether equity demands an award for attorney fees to Barbara. Each issue will be discussed in turn.

First, we address the child support issue. It is well established parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984) (citation omitted). The factors to consider are the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had there not been a dissolution; the cost of day care; the physical and emotional health needs of the child; and the child's educational needs. Iowa Code § 598.21(4) (1993).

The trial court ordered David to pay Barbara child support in the amount of $69.47 per week, until Amy turns eighteen. David argues Barbara voluntarily abandoned her higher paying job. It is true Barbara and her new husband moved to Hopkinton, a small community approximately ten miles from Monticello, Iowa. There was evidence presented jobs are not plentiful in the Hopkinton area. There is little likelihood Barbara will increase her income in the immediate future. Barbara worked for Norand at one time, but that is not practical now given her location.

When Barbara and her new husband moved to Hopkinton, Amy was still with her father in Cedar Rapids. There is no evidence the move was intended to reduce her income or to interfere with David's relationship with Amy. Thus, this case is unlike those where a party abandoned employment or took part in other conduct to bring about a reduced income and thereby avoid a reasonable support order. See, e.g., In re Marriage of Vetternack, 334 N.W.2d 761, 763 (Iowa 1983) (order for child support payments would not be modified where father became incarcerated for felony); Ellis v. Ellis, 262 N.W.2d 265, 268 (Iowa 1978) (husband's planned voluntary retirement did not justify elimination of his alimony obligation); In re Marriage of Kern, 408 N.W.2d 387, 389-90 (Iowa App. 1987) (husband's conviction of felony offense and surrender of license to practice medicine did not warrant elimination of alimony obligation, as his inability to pay was self-inflicted and due to his own fault). Under these facts, "[w]e respect [Barbara's] choice and will not penalize her for making that choice [to stay home]." In re Marriage of Bonnette, 492 N.W.2d 717, 721 (Iowa App. 1992) (citing In re Marriage of Beeh, 214 N.W.2d 170, 174 (Iowa 1974); In re Marriage of Deierling, 421 N.W.2d 168, 171 (Iowa App. 1988)). The trial court did not err in computing David's periodic child support.

The second issue relates to Amy's college expenses. By statute, divorced parents have an obligation to support their children while attending college. In re Marriage of

Byall, 353 N.W.2d 103, 107 (Iowa App. 1984). This obligation depends largely on the circumstances of each case. In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980). The trial court ordered David to pay Amy's college expenses. David argues Amy's future college needs are speculative and any order establishing an obligation on him for those costs is premature. A court order may be made before a child reaches eighteen or is accepted into an accredited school provided the order is conditioned upon the child meeting the requirements of Iowa Code section 598.1(2) (1993). See In re Marriage of Richards, 439 N.W.2d 876, 879 (Iowa App. 1989); Vrban, 293 N.W.2d at 201. There is nothing inappropriate or premature about an order for college expenses for a sixteen-year-old child who is an honor student and who has expressed a desire to go to college. See In re Marriage of Richards, 439 N.W.2d 876, 879 (Iowa App. 1989) ("an order regarding college expenses is particularly appropriate in this case where the eldest was seventeen years old") (citations omitted). The trial court had sufficient financial information to determine the parties' relative abilities to pay. Iowa Code § 598.1(2) (1993).

David further argues the trial court's ruling is contrary to the principle set forth in Richards where we held it was equitable for both parents to furnish financial support for higher education in such an amount as their financial condition permits. Richards, 439 N.W.2d at

879-80. Additionally, David points out a parent's responsibility for college support is based on the amount of the child's expenses and is often limited to the cost of attending a state-supported university in the state of the student's residence. Id. at 880.

By imposing upon David the sole obligation to provide such assistance, we agree the trial court should have taken into consideration the abilities of both parents to contribute and also the availability of grants, scholarships, and loans for Amy. We modify the trial court's order in this regard. We hold David's contributions should be limited to one-half of room, board, and tuition in a state institution in Iowa, plus the full costs of books.

We turn our attention now to the third and final issue. Barbara seeks an award of appellate attorney fees and costs 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 Kern, 408 N.W.2d 387, 390 (Iowa App. 1987) (citation omitted). 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. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

In this case, Barbara was compelled to bring suit in order to recover child support. Barbara's earnings are limited, and her ability to seek out higher paying jobs is seriously in question. We award Barbara $750 to apply to her appellate attorney fees. David shall pay costs on appeal. Judgment of the trial court is affirmed as modified.

AFFIRMED AS MODIFIED.