IN THE COURT OF APPEALS OF IOWA

No. 1-515 / 91-203

FILED
MAY 23 1992
CLERK SUPREME COURT

IN RE THE MARRIAGE OF ANN EILEEN EGAN AND JOHN BERNARD EGAN

Upon the Petition of
ANN EILEEN EGAN,

Appellant,

And Concerning
JOHN BERNARD EGAN,

Appellee.

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Appeal from the Iowa District Court for Fayette County, George L. Stigler, Judge.

Ann Egan appeals a district court order modifying the child support provisions of the parties' original divorce decree. **AFFIRMED AS MODIFIED.**

John W. Hofmeyer III, Oelwein, for appellant.

John Bernard Egan, Westgate, pro se.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Ann and John Egan were married in 1968. They had seven children during their marriage, and their names and dates of birth are as follows:

Matthew Joseph Egan	October 12, 1968
Kelly Jo Egan	October 7, 1969
David Edward Egan	October 3, 1970
Sharon Marie Egan	December 16, 1971
Jennifer Lee Egan	November 15, 1972
Laura Lynn Egan	September 14, 1980
Stephanie Anne Egan	July 23, 1982

The parties were divorced in August 1984. The parties were granted joint legal custody, with Ann having primary physical care. John was ordered to pay child support of $30 per week per child until each child became eighteen, graduated from high school, died, married, or became self-supporting or otherwise emancipated.

The dissolution decree provided:

> If the parties are financially able to assist the children with post high school education, they should do this as best they can, but the Court deems it advisable to leave that situation flexible at this time. Furthermore, the children do have certain assets of their own, which could give them assistance for a period of time in college.

Ann filed the present petition for modification on May 9, 1990, asking for increased child support. She also sought to have John contribute to the college expenses of Matthew, Kelly, David, and Sharon.

The district court determined there had been a substantial change in circumstances since the time of the original decree. At the time of the dissolution John was

employed at John Deere Waterloo Tractor Works. He had gross income of $32,321 per year and net income of $1,808.34 per month. The district court determined that currently John is still employed at John Deere and his net income is $2,468.85 per month. Ann did not work outside the home at the time of the dissolution, and this has not changed. However, she has net income of between $401 to $500 per month from farm rents and alimony.

The district court noted that at the time of the modification order, December 18, 1990, four of the children were over the age of eighteen. Also, the oldest child, Matthew, was then twenty-two years old and outside the jurisdiction of the court to order child support. The court found the child support guidelines should be applied to determine the support of the six younger children. John was ordered to pay child support of $1,093.70 per month. John was ordered to pay $300 towards Ann's attorney fees. Ann appealed the modification order.

I. Our scope of review in modification cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

The trial court has reasonable discretion in determining if modification of a dissolution decree is warranted. In re Marriage of Shepherd, 429 N.W.2d 145, 147

(Iowa 1988). On appeal we do not disturb the trial court's conclusions unless there has been a failure to do equity. Id.

II. Ann first contends the district court should have provided for an automatic annual adjustment of John's child support obligation. She asks that John's support under the guidelines be recalculated each year. In the alternative, she asks for an annual cost of living adjustment.

We decline Ann's request to provide for an annual adjustment to John's child support obligation. The child support guidelines make cost of living adjustments unnecessary. See In re Marriage of Ludwig, 478 N.W.2d 416, 419 (Iowa App. 1991). Once child support is set under the guidelines, that amount is static, even if the guidelines or the parties' relative incomes changes. Id. at 420. The parties must file for modification if the original support award is to be adjusted. Id.

III. Ann also asks that the newest child support guidelines be applied. The district court applied the 1989 guidelines, not the December 1990 guidelines

There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). In our de novo review, we apply the most current guidelines. In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

We note that while the December 1990 guidelines should be applied, the guidelines only apply at this time to the two youngest children, Laura and Stephanie. The child support guidelines are not applicable to determine support for children over the age of eighteen who otherwise qualify for support as students. See In re Marriage of Linberg, 462 N.W.2d 698, 701 (Iowa App. 1990).

As the district court recognized, the four oldest children were over the age of eighteen at the time of the modification order. The fifth oldest child, Jennifer, turned eighteen on November 15, 1990, and thus did not come under the child support guidelines either.

We determine John's child support obligation for two children under the guidelines is $846.82 per month. John must pay this amount until Laura reaches the age of eighteen, dies, or becomes emancipated. At that time his child support obligation will be reduced to $604.87 per month until Stephanie reaches the age of eighteen, dies, or becomes emancipated.

IV. We next address John's responsibility for the college expenses of the children who are between the ages of eighteen and twenty-two and are attending full-time an institution of higher education.

Iowa Code section 598.1(2) imposes an obligation on divorced parents toward their adult offspring to support them while they are attending college. In re Marriage of Lieberman, 426 N.W.2d 683, 686 (Iowa App. 1988). The

statute allows the trial court in its discretion to award support of the children through college under the proper circumstances. Id. Among the factors to be considered are the financial condition of the parent, ability of the child for college work, age of the child, and whether the child is self-sustaining or not. In re Marriage of Richards, 439 N.W.2d 876, 879 (Iowa App. 1989).

There is no authority under section 598.1(2) to order support for children who are over the age of twenty-two. Thus, Matthew, who turned twenty-two in October 1990, and Kelly, who turned twenty-two in October 1991, are not eligible for any type of support.

Two of the other children, David and Sharon, were under the age of twenty-two and were attending college. We determine John should help pay the college expenses of these children. We order John to pay one-third of the children's college expenses, which shall be limited to the costs of attending a state-supported university in Iowa. See In re Marriage of Boehlje, 443 N.W.2d 81, 84 (Iowa App. 1989); In re Marriage of Smith, 351 N.W.2d 541, 543 (Iowa App. 1984).

We noted Jennifer turned eighteen just prior to the district court's modification order. If she decides to attend an institution of higher education, John must pay one-third of her college expenses, limited to the costs of attending a state-supported university in the state of her residence.

John's support obligation for David, Sharon, and Jennifer will terminate as each child reaches the age of twenty-two.

V. Ann claims the district court abused its discretion in not awarding her a greater amount for attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id. We find the district court did not abuse its discretion in this case.

VI. Ann also asks for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We find the parties should be responsible for their own attorney fees for this appeal.

VII. In summary, we have modified the dissolution decree to order John to pay $846.82 per month in child support for the two children who are under the age of eighteen. John must also pay one-third of the college expenses, limited to the cost of attending a state-supported university in the state of the child's residence, for the three children who are between the ages of eighteen and twenty-two. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.