

IN THE COURT OF APPEALS OF IOWA

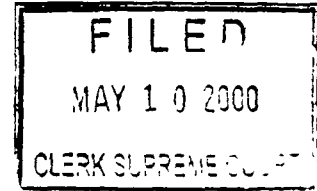
No. 1999-495 (9-752) / 99-0280

Filed May 10, 2000

IN THE MARRIAGE OF VERA MARIE MOORE AND DANN MOORE

Upon the Petition of
VERA MARIE MOORE,
Petitioner-Appellee,

And Concerning
DANN MOORE,
Respondent-Appellant.



Appeal from the Iowa District Court for Marshall County, Carl E. Peterson,
Judge.

Dann Moore appeals from the district court order modifying the parties' dissolution decree to increase his child support obligation. **AFFIRMED AS MODIFIED.**

Michael J. Moon of the Moon Law Office, Marshalltown, for appellant.

W. J. Latham, Jr. of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C.,
Marshalltown, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

MILLER, J.

Dann Moore appeals from the district court order modifying the parties' dissolution decree. He claims: (1) future stock options were not marital property; (2) he should be required to pay a lesser amount of his bonuses as child support; (3) Vera Peglow, formerly Vera Moore, was not entitled to attorney fees; and (4) his summer visitation should be increased. Vera seeks appellate attorney fees. We affirm as modified.

Dann and Vera were previously married. They have three children, Angela, born in July 1980; Michelle, born in November 1981; and Alexander, born in January 1988.

During the marriage, Vera was employed as a licensed practical nurse. Dann was employed as a store manager for Wal-Mart Stores, Inc. He earned a salary of about \$50,000, plus a yearly bonus of about \$36,000. In 1993, Dann moved to Ohio to become a territory manager for Wal-Mart, where he had an annual salary of \$85,000 per year. Territory managers did not receive bonuses at that time, but could receive stock options.

A dissolution decree was entered for the parties on November 9, 1993. The decree gave the parties joint custody of the children, with Vera having physical care. Dann was awarded visitation of three weeks during the summer. He was ordered to pay child support of \$2528 per month for the three children. The court divided the assets nearly equally.

In calculating Dann's child support obligation, the district court attributed to Dann a salary of \$85,000, plus the bonus of about \$36,000 he had received as a store manager. The parties agreed the court had not correctly determined

~~Dann's income.~~ They entered into a stipulation to modify the dissolution decree, and ~~this stipulation~~ was approved by the court on November 18, 1993. The modification provided Dann's child support obligation would be \$2000 per month. If Dann received a bonus in 1994 for his work as a store manger in 1993, he would pay thirty-eight percent of the net amount to Vera. Also, if Dann elected to exercise stock options over the next fifteen years, Vera was entitled to one-half of the stock. Dann's summer visitation was increased to four weeks.

At the time of the modification, Dann did not have any stock options. The parties were aware, however, that as a territory manager Dann could be offered stock options in the future. In 1996, Wal-Mart began to pay territory managers an annual bonus in addition to offering stock options.

In June 1998, Vera filed a petition to modify the decree to increase Dann's child support obligation. Dann filed a cross-petition seeking to increase the amount of his summer visitation. Through discovery, Vera found out Dann had exercised some stock options, but had not given her any of the stock. She subsequently amended her petition to request a determination of the amount of stock to which she was entitled.

The district court entered its decision on December 24, 1998. The court determined the provision concerning stock options was part of the property division, and could not be modified. The court found Dann had an annual salary of \$105,145, plus in 1998 he received a bonus of \$32,172. If Vera worked full-time she would have annual income of about \$18,000. The court ordered Dann to pay child support of \$1647 per month for the two children who were minors. Dann was ordered to pay, as child support, twenty-five percent of the gross

amount of any bonus he received. The court found Dann had not shown a sufficient change in circumstances to modify summer visitation. The court ordered Dann to pay \$1000 toward Vera's attorney fees.

Both parties filed motions pursuant to Iowa Rule of Civil Procedure 179(b). The district court noted the parties' oldest child was still in high school, and ordered Dann to pay \$1962 in child support until June 1999, when his obligation would be reduced to \$1647. The court determined Dann should pay, as child support, eighteen percent of any bonus he received while he was paying support for three children. The percent of a bonus he should pay as child support would be reduced to fifteen percent when he was paying support for two children, and ten percent when he was paying support for one child.

I. Scope of Review

An action for modification of a dissolution decree is tried in equity, and thus, our review is de novo. Iowa R. App. P. 4. A party seeking modification of a dissolution decree must establish by a preponderance of the evidence that there has been a substantial change in the circumstances since the entry of the decree or of any subsequent intervening proceedings. *In re Marriage of Maher*, 596 N.W.2d 561, 564-65 (Iowa 1999). The district court has considerable discretion in determining whether modification is warranted, and we will not disturb that discretion unless there is a failure to do equity. *In re Marriage of Vettermack*, 334 N.W.2d 761, 762 (Iowa 1983).

II. Stock Options

Dann contends the provision concerning stock options was not part of the property distribution. He states the stock options were part of the benefit

package he received from his employer. Dann asserts the options should be treated as income when they are exercised. He asks to have the decree modified to provide that he should be required to pay child support of ten percent on the net amount of the options exercised.

Whether the stock options should be considered property or income, they were given in lieu of child support. Under the original decree Dann paid child support based on his salary and bonus. Because Dann did not actually receive a bonus, but could receive stock options, the parties entered into an agreement which became the 1993 modification. Under the modification Dann's child support obligation was reduced, but he was required to make additional payments based on his compensation package, i.e., a portion of any bonus received in 1994 for work in 1993 and a portion of any stock options exercised.

We find no reason to modify the parties' agreement now. We note Dann did not seek to have his child support obligation decreased. He is currently earning more than he did at the time of the modification. We determine the stock option provision should not be modified.

III. Bonuses

The district court determined Dann should pay, as child support, eighteen percent of the gross amount of any bonus he received while he was paying support for three children. The percent of a bonus he should pay as child support would be reduced to fifteen percent when he was paying support for two children, and ten percent when he was paying support for one child. Dann asks us to reduce to ten percent of his net bonus the amount he should be required to pay as child support.

Dann's net monthly income is more than \$6000 per month. The amount he should be required to pay as child support is deemed to be within the sound discretion of the court, but no less than the amount payable by a parent who earns \$6000 per month, unless a downward deviation is warranted under the special circumstances of the case. *In re Marriage of Beecher*, 582 N.W.2d 510, 513 (Iowa 1998). The trial court gave cogent and valid reasons for ordering that Dann pay a percent of his gross bonus as child support, and we see no reason to modify to a percent of his net bonus. We do find it would be equitable to reduce the amount of bonus he must pay as child support to ten percent of his gross bonus. This percent shall remain in effect as long as Dann is responsible to pay child support.

IV. Summer Visitation

Dann asks to have summer visitation from the second week of June until the second week in August. He testified his circumstances have changed in that he is now married, has a comfortable home, and has four weeks of vacation in the summer. Under the modified decree, Dann has four weeks of summer visitation, to be taken in two fourteen-day periods.

To justify a change in visitation, a party must show there has been a change of circumstances since the dissolution decree. *In re Petition of Holub*, 584 N.W.2d 731, 733 (Iowa App. 1998). The burden in an action to modify visitation rights is different than the burden in a child custody case. *In re Marriage of Spears*, 529 N.W.2d 299, 302 (Iowa App. 1994). Generally, a much less extensive change in circumstances need to be shown in visitation rights cases. *In re Marriage of Rykhoek*, 525 N.W.2d 1, 3 (Iowa App. 1994).

The district court found Dann had not proved a sufficient change in circumstances to warrant modifying the visitation provisions of the modified decree. We agree there has not been a sufficient change in circumstances. The changes to Dann's life would not have been beyond the contemplation of the district court at the time of the 1993 modification.

V. Trial Attorney Fees

The district court ordered Dann to pay \$1000 toward Vera's trial attorney fees. Dann claims the district court abused its discretion. He points out Vera may receive a large amount of stock under the stock option provision.

An award of attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). The court should make an attorney fee award which is fair and reasonable in light of the parties' financial positions. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 854 (Iowa App. 1998). We find the district court did not abuse its discretion in awarding trial attorney fees to Vera.

VI. Appellate Attorney Fees

Vera asks for attorney fees for this appeal. 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 Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). We determine Dann should pay \$500 toward Vera's appellate attorney fees.

In conclusion, we modify the trial court's modification ruling to order Dann to pay, as child support, ten percent of the gross amount of any bonus he

receives. We affirm on all other grounds raised in the appeal. Costs of this appeal are assessed to Dann.

AFFIRMED AS MODIFIED.