IN THE COURT OF APPEALS OF IOWA

No. 1-210 / 00-1456
Filed May 23, 2001

IN RE THE MARRIAGE OF JERI BERNICE ATKINS AND STEVE ATKINS

Upon the Petition of
JERI BERNICE ATKINS,
Petitioner-Appellant,

And Concerning
STEVE ATKINS,
Respondent-Appellee.

FILED
MAY 23 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

The petitioner appeals a district court ruling granting her modification action and denying respondent's modification application. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., Des Moines, for appellant.

Marci B.H. Tooman of Hopkins & Huebner, P.C. Des Moines, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Jeri Hammen appeals and Steve Atkins cross-appeals a district court ruling on Jeri's petition to modify the parties' dissolution decree. Jeri argues the district court erred in determining the amount of Steve's child support arrearages. Steve requests an award of appellate attorney fees.

I. Background Facts and Proceedings.

Jeri and Steve were married on March 3, 1984. Their marriage was dissolved on April 30, 1987. The parties' child, Ashley, was placed in Jeri's physical care. Steve was ordered to pay child support of $243 per month beginning May 15, 1987.

These proceedings concern Jeri's action to enforce and increase Steve's child support obligation. The disputed issues at trial included the extent of Steve's child support arrearages. Jeri, citing Child Support Recovery Unit (CSRU) records, claimed Steve's payments were substantially in arrears. Steve denied Jeri's claims, citing direct payments of child support to her and an October 16, 1996 affidavit filed with the clerk of court October 31, 1996, in which Jeri acknowledged receipt of all support due from May 15, 1987 through October 16, 1996.

The district court rejected Jeri's claim that the October 16, 1996 affidavit was fraudulently obtained. Based on a determination that the October 16, 1996 affidavit was valid, the court credited Steve for all child support due up to and including October 31, 1996. The court, however, declined to give Steve credit for child support payments made directly to Jeri following the filing of her affidavit.

As a result, the court calculated Steve's arrearage to be $6512 plus accrued interest.

On appeal Jeri challenges the district court's determination that her 1996 affidavit was sufficient to satisfy Steve's child support arrearages. She contends the true amount of Steve's arrearages are those shown by the CSRU records and the contrary provisions of the district court's decision should be modified accordingly. Steve argues the record supports the district court's decision and it should be affirmed. He also demands an award of appellate attorney's fees.

II. Standard of Review.

Our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995). 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); *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991).

III. Jeri's Affidavit.

The general rule is that only payments made to the clerk of the district court and the collection service center will satisfy a child support obligation. Iowa Code § 598.22 (1997). Iowa Code section 598.22A(1), provides the following exception:

> For payment made pursuant to an order, the clerk of the district court or collection service center shall record a satisfaction as a credit on the official support payment record if its validity is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment, after notice is given to all parties.

Because Jeri's filing of the requisite affidavit is not disputed, the dispositive question is whether its validity can be confirmed on this record. Based on our de novo review of the record, we conclude that it can.

The undisputed record concerning the October 16, 1996 affidavit indicates Steve asked Jeri to sign this affidavit so he could secure a bank loan and that he gave her a check for $16,836.33 at that time. Steve testified that the check was written solely for the purpose of satisfying CSRU's records and that Jeri agreed not to cash it. Jeri disputed this version and testified Steve told her to postpone depositing the check because he did not have sufficient money to cover it at that time. The check was dishonored when Jeri deposited it for collection in September 1999.

The district court's findings of fact on this issue provide:

> Respondent [Steve] does not dispute that the records of the Collection Service Center and Clerk of Court , if considered without reference to any other evidence or testimony, would indicate that virtually no child support has been paid over the past 13 years, and that Respondent would owe a substantial sum of money to the Petitioner. However, such a result would be inconsistent with other uncontroverted evidence in the record, and would be inequitable and unjust.
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> Both parties admitted under oath during the trial that Respondent would regularly pay child support to the Petitioner, although he would pay her directly. Throughout the review of the records of the Collection Service Center, Petitioner would "not recall" whether any other monies were paid. However, when pressed, she acknowledged that she had been paid money directly from Respondent.
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> Most telling is a *Receipt*, signed by Petitioner in October 1996. This was admitted into evidence as Petitioner's Exhibit 27, and Respondent's Exhibit A. This document, signed by Petitioner and filed with the court on October 31, 1996, states as follows:

> I, the undersigned, do state under oath:
> 1. I am the Petitioner.
> 2. Steve Atkins was required to pay child support to me.
> 3. Steve Atkins has paid the child support which has come due up to this date.
> 4. This receipt was required by Bank Altoona as part of the process of obtaining a mortgage loan.
>
> //s// Jeri Bernice Atkins
> Notary

> At trial, Petitioner sought to disavow this document, and would have the Court believe that the statements contained therein are untrue. However, the record is clear in this matter that at no time during the entire time since the parties were granted a dissolution of marriage, did Petitioner ever seek enforcement of the Decree. There are no contempt actions on file, nor is there any indication that Petitioner took any action contrary to the statements contained in the *Receipt*.

These findings of fact enjoy substantial evidentiary support, and we adopt them as our own.

Resolution of Jeri's claim that her affidavit was fraudulently obtained requires us to determine which of the parties' irreconcilably conflicting versions of the facts is more credible. The district court resolved this conflict against Jeri citing her failure to deposit Steve's check for nearly three years and indisputable evidence that Jeri received direct child support payments from Steve during the relevant time period. Because these factual determinations implicate the court's trial perspective and resulting negative assessment of Jeri's credibility, we defer to the district court's findings of fact on this issue. *See Neimann v. Butterfield*, 551 N.W.2d 652, 654 (Iowa Ct. App. 1996) (trial court has superior vantage point to make credibility determinations due to its ability to consider firsthand the

demeanor and appearance of the parties.) We, like the district court, reject Jeri's claim that her affidavit was fraudulently obtained.

We, based on these findings, confirm the validity of Jeri's October 1996 affidavit given in satisfaction of Steve's then-existing child support arrearages. The judgment of the district court is therefore affirmed.

IV. Attorney's Fees.

An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994). In determining whether to award appellate attorney fees, we 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 decision of the trial court on appeal. *Id.* Given the circumstances present in this action, we find equity does not warrant an award of appellate attorney fees to Steve.

AFFIRMED.