IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CAROLYN E. UCHTORFF & RICHARD E. UCHTORFF

Upon the Petition of)

CAROLYN E. UCHTORFF,) Filed November 26, 1980

Petitioner-Appellee,)

And Concerning)

RICHARD E. UCHTORFF,) 0-273
2-64395

Respondent-Appellant.)

FILED
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CLERK SUPREME COURT

Appeal from Scott District Court - Nathan Grant, Judge.

Respondent-father appeals the trial court's order in a dissolution decree asserting he should not have to pay his daughter's college expenses and should have the right to choose the college she attends. - AFFIRMED.

H. Reed Doughty & Stewart R. Winstein, of Winstein, Kavensky, Wallace & Doughty, Rock Island, for respondent-appellant.

Seymore M. Raben, Davenport, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

SNELL, J.

Respondent-father Richard Uchtorff appeals the trial court's order compelling him to pay college educational expenses and support for his daughter Lynda. Richard argues: 1) he should have sole authority to decide what college Lynda attends, 2) he does not have to pay for Lynda's tuition and books, 3) he does not have to pay for Lynda's support if she continues to reside with her mother while attending college.

On February 21, 1978, the marriage of Richard and Carolyn Uchtorff was dissolved. At the time of the dissolution Richard was 49, Carolyn was 39, and their three children--Sally, Lynda, and Julie—were ages 18, 16, and 12. Richard is the executive vice-president of a family owned equipment manufacturing business, and his gross income over the four years preceding the trial was in excess of $100,000 annually. Carolyn has a high school education and worked for two years as a receptionist-clerk. At Richard's request, she was not employed during the 17 year marriage and instead devoted her energies to raising the parties' three children and maintained the household. The dissolution decree awarded Carolyn the family residence, home furnishings, and personal property with a net value of $236,000. She was awarded alimony of $1500 per month, but on appeal to this court we ordered the alimony reduced to $750 per month effective as of the time the youngest child reaches age 18. Richard received property valued at approximately $363,805, consisting primarily of corporate stock in the family business.

The dissolution decree provided that Richard pay Carolyn $250 per child per month in child support and that the payments be reduced by $250 as each child reaches eighteen years of age or finishes high school, whichever comes later. The decree further provided: "Additionally, in the event that each child is in good faith a full-time student as provided by section 598.1(2), The Iowa Code, the said respondent shall be responsible for the educational expense in a reasonable amount, but in no event for less than educational expense in the sum of $250 per month on a 12 month per year basis per child so enrolled."

In August, 1979, Lynda enrolled as a freshman at St. Ambrose College in Davenport and remained living at home with Carolyn. Richard failed to pay the expenses for Lynda's tuition or books, and in September Carolyn filed an application for determination of Richard's obligations to Lynda. On October 26, 1979, the trial court

found that the intent of the decree was to require Richard to furnish expenses of tuition and books with regard to a college education for the minor children of the parties. Richard was ordered to reimburse Carolyn, who paid Lynda's tuition at St. Ambrose, of $1475 and book expense of $80. He was further required to pay tuition and book costs so long as Lynda qualified as a full-time student under Iowa law and $250 per month for her maintenance while residing with her mother.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing the child support provisions of a dissolution decree, we consider factors articulated in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974).

Richard discerns from the language of the court's original decree a minimal obligation for Lynda's college education in an amount not exceeding $250 per month. Any further financial help would be purely voluntary. And in any event, Richard construes from the lack of specificity in the decree and in the statute authorizing support, section 598.1(2), a right in him as the provider to choose the college for Lynda.

Lynda testified she informed her father in May or June of 1979 that she planned to attend St. Ambrose College to study accounting because it was known for its accounting department. When asked by him if she was sure, she said she was. Although Richard acknowledges he had lunch with his daughter at which time her interest in St. Ambrose was discussed, he professes an unawareness of her decision to attend until she gave him a copy of her student schedule and tuition invoice.

Richard feels that the University of Iowa can provide Lynda with an equally good education. He also regards the comparative cost as a significant factor, pointing out that it will cost him $4360 per year to send his daughter to St. Ambrose or $2670 to the University of Iowa, a saving of $1690. Underlying Richard's position is his complaint that his older daughter, Sally, went to college in Florida, apparently without his approval. Richard paid for Sally's education but resolved his present frustrations by refusing to pay Lynda's expenses at St. Ambrose.

Our law which establishes parental responsibility for these expenses is found in section 598.1(2), defining support, and in section 598.21, The Code 1979. Section 598.1(2)

provides: "Such obligations may include support for a child who is between the ages of eighteen and twenty-two years who is . . . in good faith, a full-time student in a college, a university or area school; or has been accepted for admission to a college, university or area school and the next regular term has not yet begun; . . ." Section 598.21 states: "When a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties and the maintenance of the parties as shall be justified."

Provisions for the payment of tuition, fees, books, and course materials for a college undergraduate education have been approved. In re Marriage of Ward, 226 N.W.2d 812, 814 (Iowa 1975). Board and room expenses are encompassed by the statute. In re Marriage of Moffatt, 279 N.W.2d 15, 22 (Iowa 1979). And additional support beyond these sums is not foreclosed. Id. at 22. Though authorized by statute, each determination of parental responsibility for college expenses depends on the multi-factored circumstances of the parties. See In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974); In re Marriage of Cooper, 225 N.W.2d 915, 920 (Iowa 1975); Youel v. Youel, 218 N.W.2d 449, 452 (Iowa 1974); In re Marriage of Briggs, 225 N.W.2d 911, 914 (Iowa 1975).

From a review of this record, the cases and statutes, we find the trial court's order in relation to Lynda's college expenses was justified under section 598.21, The Code. Richard's trumpeting for relief from the burden of paying the expense of a private college education for Lynda carries with it the dissonant sounds of penuriousness and obduracy. Since Richard at trial time had an established annual income of well over $100,000 and substantial assets, he is not unduly burdened by Lynda's choice of college. The choice of St. Ambrose which allows her to live at home while attending college is not unreasonable. Moreover, it will allow Richard more opportunity to see Lynda, at least in terms of proximity, satisfying to some extent a desire he has consistently voiced, regarding his visitation rights with the children.

Richard insists that with the responsibility for paying for a child's education must go the right to determine where it is obtained, not a suprising notion. Yet that precept emanating from a normal family situation does not necessarily follow in what are still the abnormal circumstances surrounding divorce litigation. There is, perforce, a loss of

many rights to determine the future of one's children, the unfortunate fallout of the breakup of the family.

Lynda, on reaching age eighteen, obtained all the rights of self-determination ensured to citizens of full age. § 599.1, The Code 1979. It is for her to decide what college she attends. The court has been empowered by the legislature to fix the kind and amount of financial assistance to her that is justified. § 598.21, The Code 1979. But we find nothing in the statute, cases, or logic to support the carving out from her majority rights a special exception that allows her father to direct her destiny.

Each party shall pay the respective attorney fees incurred by this appeal. Costs are assessed to Richard.

AFFIRMED.

All judges concur, except Carter and Oxberger, JJ., who concur in part and dissent in part.

CARTER, J. (concurring in part and dissenting in part)

I concur in the result reached by the trial court as to Richard's obligation for past expenses incurred as a result of his adult daughter's attendance in college. But with respect to his future obligations under the decree, I cannot accept the view that he is necessarily bound to pay for a college of his daughter's choice even though he can afford to do so. I believe it is unfair to characterize his legitimate concern for these costs as penuriousness.

The majority decision relies too heavily on Richard's ability to pay in determining what support should be required for an adult child attending an educational institution. In the absence of special circumstances, he should not be required to pay more than is required to provide suitable education for his daughter. Child support is to be measured by needs, not wants. Chase v. Chase, 255 Iowa 686, 690, 124 N.W.2d 168, 170 (1963).

Oxberger, C.J., joins in this dissent.