IN THE COURT OF APPEALS OF IOWA

No. 6-791 / 96-0406

000281

IN RE THE MARRIAGE OF JACQUELINE L. SANGER AND GUIDO SANGER, JR.

Upon the Petition of JACQUELINE L. SANGER n/k/a JACQUELINE BROWN-FUGATE,

Petitioner-Appellant,

FILED
JAN 29 '97
CLERK SUPREME COURT

And Concerning GUIDO SANGER, JR.,

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Petitioner appeals the district court's modification of the parties' dissolution decree. **AFFIRMED.**

Ta-Yu Yang, Des Moines, for appellant.

Debra Rectenbaugh Pettit and Jo Ellen Whitney of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee.

Heard by Cady, P.J., Huitink, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

The marriage of Jacqueline and Guido Sanger was dissolved by decree entered on February 1, 1979. The dissolution involved one child of the parties, Stephanie, who was born on September 27, 1977. This appeal involves a modification action brought by Jacqueline on November 4, 1994.

The decree of dissolution provided that Guido was required to pay $60 per week in child support. The decree further provided that the child support would continue until Stephanie reached the age of eighteen years or graduates from high school. The court retained jurisdiction to determine Guido's responsibility for support in the event Stephanie wished to attend further schooling beyond high school.

At the time of the filing of the petition for modification in this matter, Stephanie was still attending high school. She transferred to the Youth at Risk program through the Des Moines Area Community College. She was placed in this program because she had missed a substantial number of days of school. She ultimately obtained her GED, but continued with the program to obtain her high school diploma. Jacqueline's application for modification sought an increase in child support pursuant to section 598.21(9) because of a change in circumstances, and asked for an increase in child support due to the extra expense of Stephanie attending further classes in high school. She asked that increased support be ordered from the 27th of September, 1995 (Stephanie's eighteenth birthday) through the time of trial and until Stephanie received her high school diploma. At the time of trial of this

modification action, no plans had been made for Stephanie to attend any institution of higher learning.

The trial court denied any retroactive increase in the child support and held that support was not appropriate after September 27, 1995, since it held that Stephanie was not a full-time high school student at that time. It held that Guido would be responsible for payment of a maximum of $2000 per calendar year for Stephanie's educational expenses, providing she attends DMACC. He will be responsible for sixty-six percent of her college expenses should she attend another institution. The amount is to be paid directly to the college, community college, or other program in which Stephanie is enrolled. Jacqueline does not appeal the amount of support for higher education ordered by the trial court.

1. Jacqueline appeals the court's denial of the retroactive modification of child support commencing on November 8, 1994. She contends the court should have ordered a retroactive increase in child support due to a change in circumstances. At the time of the original decree of dissolution there were no child support guidelines. Child support in this case was set at $60 per week. All child support at that rate was satisfied. Guidelines adopted and modified during the interim would have permitted a court to modify the child support initially ordered upon at least two occasions, due to the adoption of and modification of the guidelines. The trial court denied any retroactive modification of child support.

The district court has authority to modify child support payments to the date

of the petition for modification. Such modification, however, is not mandatory. *In re Marriage of Shepherd*, 429 N.W.2d 145 (Iowa 1988); *State of Iowa Dep't of Social Serv. v. Kitner*, 512 N.W.2d 309, 313 (Iowa App. 1993). A modification from November 21, 1994 (the date of acceptance of service of the petition for modification) would involve ten months. The trial court found that from November 21, 1994 until September 27, 1995, Guido had paid $2760 in child support. It found during that period of time his net monthly income was $1413.82. The trial court imputed income to Jacqueline in the net amount of $756.45 per month. Based upon these income figures, using the 1990 child support guidelines would indicate a child support payment from Guido in the amount of $332.24 per month (23.5 percent of $1413.82). The trial court, in its discretion, refused to increase the child support for this period. While it had the power to do so, such an increase was not mandatory.

In arriving at its decision, the trial court also included a calculation based upon imputed income to Jacqueline. While married to Guido, Jacqueline worked outside the home and had income of her own. Jacqueline does not work outside the home and has no income, only the support paid by her second husband. She and her husband have claimed Stephanie for income tax dependency allowances for approximately ten years. Stephanie was not employed at the time of trial, although the evidence showed she had been in the past. We believe under all the circumstances that the trial court was correct in refusing to increase the child support during the short period covered by this modification action.

2. Jacqueline also appeals the court's refusal to continue child support past Stephanie's eighteenth birthday. She contends that Stephanie was, at the time of trial, a full-time student seeking her diploma from high school. On that issue, the trial court stated:

> The court finds that support shall terminate at the time Stephanie Sanger was not a full time high school student. She has obtained a GED. And while it is commendable that she seeks a diploma, the original decree contemplated support until such time as she achieved, in this Court's opinion, the functional equivalent of a diploma. She can, now, make application to colleges if she wishes. It is at that juncture that support was intended to end, unless she actively pursued college.
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> Support is not appropriate after September 27, 1995.

The court recognized that the support order of the dissolution decree had been carried out. We do not disturb the court's decision in this regard.

Jacqueline does not appeal the court's decision with respect to support for post high school education. She does, however, appeal the court's determination that the contribution from Guido shall first be deducted from bonds set aside by Guido and his family for Stephanie's education. She claims that the $2000 set aside in bonds is a gift to Stephanie and that Guido should not get credit for contribution to her education based upon those bonds. We do not disturb this decision of the trial court.

The parties shall pay their own attorney's fees and costs are assessed against the appellant.

AFFIRMED.