FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDITH ANNE FORBES AND LARRY A. FORBES

Upon the Petition of)
JUDITH ANNE FORBES,) Filed October 18, 1979
Petitioner-Appellant,)
And Concerning)
LARRY A. FORBES,) 263
2-63179
Respondent-Appellee.)

Appeal from Polk District Court - Harry Perkins, Judge.

Petitioner appeals supplemental order in dissolution proceedings. Respondent cross-appeals. AFFIRMED.

Robert W. Brennan, Des Moines, for petitioner-appellant.

Marc S. Harding, Des Moines, for respondent-appellee.

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

DONIELSON, J.

Petitioner, Judith Anne Forbes, appeals supplemental order in dissolution proceeding, asserting temporary alimony awarded during pendency of her previous appeal should not be offset against respondent's permanent alimony obligations, and respondent should be required to pay a greater proportion of the children's educational expenses. On cross-appeal, respondent, Larry A. Forbes, asserts: The temporary alimony payments should be offset against attorney fees as well as permanent alimony; a certain horse should not have been awarded to parties' daughter; he should have been awarded a firewood box; appeal from alimony provisions of the trial court's order is an impermissible collateral attack on the final decision in the wife's previous appeal; and his obligation to pay the children's expenses should be reduced.

Our review is de novo. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977); Iowa R. App. P. 4.

I.

The original decree dissolving the marriage between Judith and Larry was entered November 4, 1977, awarding Judith $100 per month for alimony. Judith appealed this order and the supreme court ordered Larry to pay her $800 per month for alimony and support during the pendency of her appeal. This court on appeal increased the permanent alimony award to $350 per month retroactive to the date of the original decree. We also deleted a provision of the decree providing for payment of the children's post-high school educational expenses, stating that application could be made to the trial court for payment of such expenses for any child shown to be eligible, but that any such payments should be coordinated with trust agreements established under the decree.

On January 25, 1979, the trial court entered a ruling on all pending matters. The amount paid by Larry as temporary support was credited against his permanent alimony obligations. Since he had been paying $50 more than the permanent alimony award, the effect of this ruling was to credit him for the entire amount due retroactively, with the excess credited against future payments. The supreme court ordered payments continued for $350 per month during the pendency of this appeal with such payments credited against whatever the husband's permanent obligation is determined to be.

The supplemental order provided that one-third of the eldest daughter's college expenses would be paid from funds available from a trust funded by Larry, with the balance to be paid equally by him and his daughter. Although the two younger children have not yet graduated from high school, the parties argue the educational expense issue in terms generally applicable to all three children.

The supplemental order also found that a horse purchased by the husband was for the use of the eldest daughter and constituted a gift to her. The disputed firewood box was awarded to Judith. Larry claims the box is a family heirloom of no special significance to Judith.

II.

The first issue raised by Judith is whether the payments under this court's decision increasing the permanent alimony to $350.00, retroactively to the date of the decree, can be properly offset by the payments made under the supreme court's temporary alimony and support award. The resolution of this issue creates a tension between the general principle that alimony or support payments cannot be modified retroactively to alter a debt due, In re Marriage of Welsher, 274 N.W.2d 369, 372 (Iowa 1979); In re Evans, 267 N.W.2d 48, 51-52 (Iowa 1978); Wren v. Wren, 256 Iowa 484, 489, 127 N.W.2d 643, 646 (1964), and the recognized ability to credit temporary payments against a final alimony award, Riemenschneider v. Riemenschneider, 239 Iowa 617, 634, 32 N.W.2d 68, 69 (1948). We hold the trial court's offset was proper.

A review of the facts of Riemenschneider illustrates why we find this case controlling. In that case the supreme court ordered the defendant to pay to the plaintiff the sum of $200 per month as support, "pending the final decision of this cause on appeal." Id. The order further provided "said amounts" were "to be considered by this court in connection with the award finally made by this court." Id. In a supplemental opinion, the court modified its previous award to grant the defendant a credit against the permanent alimony award for the total amount of temporary alimony paid. Id.

The logic of such a determination is apparent, considering the similar purposes of temporary and permanent alimony. The objective of temporary alimony is to provide support pending the finalization of the dissolution. § 598.11, The Code 1979; 1 W.T. Nelson, Divorce and Annulment § 12.02, at 403 (2d ed. 1945). Permanent alimony is

likewise awarded, at least in part, to provide support. In re Marriage of Freese, 226 N.W.2d 800, 802 (Iowa 1975); Brin v. Brin, 240 Iowa 659, 661, 37 N.W.2d 261, 262 (1949). The two types of alimony serve the same basic function— support. Allowing both awards to stand would serve that objective too well and result in a windfall to Judith. A credit of the temporary alimony payments against the permanent award is required to reach a logical and equitable result. See Riemenschneider, 239 Iowa at 634, 32 N.W.2d at 69. Contra, Smyth v. Smyth, 201 Okla. 694, 699, 209 P.2d 709, 714 (1949).

Our only hesitation in so holding is caused by the absence of language in the supreme court's order of November 10, 1977, stating that the temporary alimony be credited to the permanent alimony obligation. Such language was found in Riemenschneider, 239 Iowa at 634, 34 N.W.2d at 69, and in an order of the supreme court entered April 4, 1979, in this case, concerning payments by Larry during the pendency of this appeal. Logic and fundamental fairness, however, requires us to conclude that such language is not a prerequisite to our holding. To hold otherwise would mean that some legitimate purpose would be accomplished by allowing a double recovery; a possibility we find hard to imagine.

We also note that this is not a retroactive modification of an owed debt, which would clearly not be permissible. In re Marriage of Moffatt, 279 N.W.2d 15, 22 (Iowa 1979). The temporary alimony payments are not being modified, but are being credited against permanent alimony payments not yet due.

We affirm the trial court's crediting of the temporary support payments against the final permanent alimony award.

III.

This court in its earlier decision in this dispute, on August 31, 1978, modified the original trial court decree by deleting the provision for payment of post-high school educational expenses of the children as contrary to section 598.12, The Code 1977. Application to the trial court was allowed for determination of this issue as to any child shown to be eligible for such support under that statute; any required payments were to be coordinated with the trust agreement established under the decree. On January 25, 1979, the trial court entered an order that funds from a trust fund should be used to pay one-third of the eldest daughter's college education, one-half the remainder of said

expenses to be provided by her father, and the remainder "to be provided by her own efforts." Judith appeals this disposition as an abuse of the trial court's discretion. Larry cross-appeals on this issue, asserting the decree is too generous.

We hold the award to be justified and correct. In re Marriage of Ward, 226 N.W.2d 813, 814 (Iowa 1975); Conkling v. Conkling, 185 N.W.2d 777, 786 (Iowa 1971). Requiring the daughter to provide a third of the cost of her college education is not unduly harsh or burdensome. Financing a college education through loans, earnings from summer jobs, and earnings from jobs during the school term is a common practice, showing the reasonableness of the trial court's disposition. It is also not so overly generous to require a reduction, as requested by Larry.

IV.

Larry's contentions raised in division IV, V, and VI are deemed waived due to his failure to state, argue, or cite authority in support of the issue. Iowa R. App. P. 14 (a)(3). Reaching the merits of each issue, we find them unpersuasive. We affirm the finding that the horse was a gift to the daughter and not subject to property division. Schantz v. Schantz, 163 N.W.2d 398, 404 (Iowa 1968).

V.

After careful consideration, we are not disposed to disturb the trial court's ruling concerning the firewood box. The extensive, time-consuming litigation in this case requires us to call a halt at some point to this seemingly endless haggling. We expect the parties to resolve this issue between themselves.

AFFIRMED.

Oxberger, C. J., concurs in result.