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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARY ELIZABETH CLARK (FORMERLY KNOWN AS MARY ELIZABETH STAMMERMAN), and WILLIAM TIMOTHY STAMMERMAN

Upon the Petition of)

MARY ELIZABETH CLARK,)

Petitioner-Appellant,)

Filed February 24, 1981

And Concerning)

WILLIAM TIMOTHY STAMMERMAN,)

Respondent-Appellee.)

0-397
2-64372

Appeal from Jefferson District Court - Dick R. Schlegel, Judge.

Petitioner appeals trial court order refusing to modify the duration and amount of child support payments under 1969 decree of divorce. AFFIRMED IN PART; REVERSED IN PART.

Ralph R. Brown of McDonald, Keller & Brown, Dallas Center, Iowa, for respondent-appellant.

Edwin F. Kelly of Kelly & Morrissey, Fairfield, Iowa, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

CARTER, J.

Petitioner-appellant's argument on appeal relates to both the duration and amount of child support payable under the March 12, 1969 decree of divorce between the parties. She seeks to reverse the order of the trial court refusing to modify child support payments either as to duration or amount. We consider the issues thus presented.

I. Duration of Child Support. The March 12, 1969 decree of divorce between the parties provided that respondent's obligation to make child support payments should terminate as to each child at age 18. On appeal, petitioner urges that the period of support should be extended to age 22 as permitted by section 598.1(2) of the present Code. That statute, which permits support orders under certain conditions for children pursuing further education, became effective long after the date of the decree by which respondent's obligations were fixed. It is therefore not applicable to the present controversy. In re Marriage of Harless, 251 N.W.2d 212, 214 (Iowa 1977).

In the alternative, petitioner urges that respondent's obligation to support his children extended to age 21 under 1969 law and therefore he can yet be ordered to continue child support payments until that age. We do not believe the record will support a modification of the decree under this theory either. It clearly appears that the parties, at the time of the original decree, were aware that the period of support then ordered was less than the full period of minority for the minor children. The reasons for such disposition have been made to appear. We cannot conclude that this was not also a matter within the contemplation of the experienced trial judge which granted the original decree. We therefore conclude that because the matter was then within the contemplation of the parties and the court, it is not now a proper subject for modification. Nor can we accept, on this record, petitioner's claim that this provision of the original decree is void as against public policy. The trial court correctly denied modification of the decree as to the duration of child support payments.

II. Amount of Child Support. As to the two children still entitled to support under the original decree (Frank and Terri), our review of the record leads to the conclusion that respondent's payments are presently too low and therefore inequitable. We further find that it has been established that this has come about due to the unanticipated effects of inflation on the buying power of these child support moneys, payable under the original decree. In considering modification on this basis, we must examine the impact of such inflation on all parties. Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974). But we do not accept respondent's contention that modification may not be

ordered unless inflation has increased the children's needs more than it has decreased his ability to pay. All that is necessary to support modification is a showing that unanticipated inflation has so increased the children's needs that it is now inequitable not to require increased support payments from the noncustodial parent. Judged by this test, we believe that respondent should, based upon his present earnings, now pay some additional amount toward the support of Frank and Terri. We therefore direct that the 1969 decree be modified so as to provide monthly child support payments for Frank and Terri in the sum of \$125 per month per child. This modification shall be retroactive to August 20, 1979. Costs of appeal are assessed to appellee.

AFFIRMED IN PART; REVERSED IN PART.

All judges concur except Donielson, J., and Oxberger, C.J., who dissent.

DONIELSON, J., dissenting

I cannot agree with the portion of the majority's opinion concerning duration of respondent's child support obligation. First, I am disturbed by the court's decision not to apply section 598.1(2) of the present Code, which would allow the period of child support to be extended until the children reach the age of 22. In my view, refusal to apply the statute most beneficial to the children involved, regardless of whether that statute was in effect at the time of the decree, reflects a position inconsistent with the cardinal rule that our primary concern in cases of this type is the best interests of the children involved. Second, I cannot agree with the majority's conclusion that the period for child support cannot be extended beyond the age of 18 because the decree provided that respondent's obligation would terminate as to each child at age 18 and because it was within the contemplation of the parties and the trial court that child support payments would terminate at age 18. I find this conclusion also essentially inconsistent with the best interests of the child standard and I hesitate to adopt a position that would in effect punish these children because their parents struck a bad deal, at least insofar as the needs of the children are concerned, at the time of the original decree. My conception of the best interests of the child standard is that it requires an on-going evaluation of the needs of the children involved. Because I think petitioner has shown that the needs of her children require child support to be paid for a longer period of time than provided for by the original decree, I would modify accordingly.

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