IN THE COURT OF APPEALS OF IOWA

No. 0-495 / 89-1829

IN RE THE MARRIAGE OF PAUL RAY McALLISTER AND EMMA JEAN McALLISTER

Upon the Petition of

PAUL RAY McALLISTER,

Appellant,,

And Concerning

EMMA JEAN McALLISTER,

Appellee.

FILED
FEB 26 1991
CLERK SUPREME COURT

Appeal from the Iowa District Court for Warren County, Gene Needles, Judge.

Husband challenges increased child support resulting from modification of his dissolution decree. **AFFIRMED.**

Ray Sullins, Des Moines, for appellant.

Marc S. Harding, Des Moines, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

The marriage between Paul and Emma McAllister was dissolved in 1987. Four children were born of the marriage. The dissolution decree placed the four children in joint legal custody and in Emma's primary physical care. The decree, however, allowed for the potential that some of the children might actually reside primarily with Paul. The decree directed Paul to pay Emma child support of $650 per month if three children lived with her and $775 per month if all four children lived with her. Paul's 1987 testimony that he earned about $32,000 per year served as the basis for the support award.

Some time after the 1987 dissolution decree, one of the children began residing with Paul. The other three children remained with Emma.

In 1987 Paul actually earned over $50,000. In 1988 he earned about $43,000, and in 1989 he was projected to earn about $45,000. Paul has worked for the same company since 1972.

In 1989 both parties applied to modify the dissolution decree; each sought various forms of relief. At the time of the modification hearing only three of the children resided with Emma and the court noted that Paul's employment income had substantially exceeded his 1987 estimates, while Emma's had remained modest (a gross of $990 per month). After the hearing, the district court

entered a modification order which, among other things, increased Paul's child support obligation. The district court applied the child support guidelines to the parties' incomes and ordered Paul to pay Emma $840 per month child support.

Paul has appealed the modification order, challenging only the increase in his child support obligation. Emma requests attorney's fees on appeal.

We review this equitable proceeding de novo. Iowa R. App. P. 4. Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack and applied in Kern are applicable here as well:

> A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be

> substantial; and (6) the change in circumstances must not have been in the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762.

We agree with the district court that Paul's increased income supports a modification of his original child support obligation. We find that the district court appropriately applied the child support guidelines promulgated by the supreme court when calculating Paul's support obligation. Therefore, we affirm the district court's order requiring Paul to pay Emma $841 per month child support.

Emma has requested we order Paul to pay her appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d at 390. We are to 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 trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

After considering the parties' positions, we order Paul to pay $1,000 of Emma's appellate attorney fees.

AFFIRMED.