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IN THE COURT OF APPEALS OF IOWA

No. 7-477 / 96-1946

FILED
DEC 29 1997
CLERK SUPREME COURT

IN RE THE MARRIAGE OF PATRICIA ANN THOMPSON AND TIMOTHY RAY THOMPSON

Upon the Petition of
PATRICIA ANN THOMPSON,

Appellee,

And Concerning
TIMOTHY RAY THOMPSON,

Appellant.

Appeal from the Iowa District Court for Marshall County, Dale E. Ruigh, Judge.

Timothy Ray Thompson appeals a district court modification order requiring him to pay $225 per month to petitioner based on the costs of room and board their son would have to pay while attending college. **AFFIRMED AS MODIFIED.**

W.J. Latham, Jr. of Johnson, Sudenga, Latham, Peglow & O'Hare, Marshalltown, for appellant.

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Streit, P.J., Mahan, J., and McCartney, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

McCARTNEY, S.J.

Timothy Ray Thompson (Timothy) appeals an order of the district court modifying a decree of dissolution requiring him to pay $225 each month to Patricia Ann Thompson (Patricia), appellee, for support of their son, Matthew, who was under the age of twenty-two years and attending college.

The marriage between Timothy and Patricia was dissolved by district court decree in 1994. Matthew became eighteen years of age in July 1995. He graduated from high school the spring of 1996 and enrolled at a community college in the fall of 1996. He continues to reside in Patricia's home while attending college.

In July 1996, Patricia asked the court to modify the decree to require Timothy to provide further support for Matthew while he was attending college.

After the modification hearing, the district court ordered Timothy to pay $225 per month to Patricia as his contribution toward Matthew's room and board expenses.

Timothy appeals the order modifying the decree. He asserts the district court erred in estimating costs of such room and board, and not setting his support on the actual additional expenses Patricia incurs while Matthew lives with her. Patricia presented evidence of her actual total expenses, not those expenses solely attributable to Matthew. Timothy further asserts Patricia's expenses for Matthew were minimal and payment to her of $225 per month subsidizes Patricia's own living costs and not those of Matthew. We affirm as modified.

Our review is de novo. Iowa R. App. P. 4.

The district court has authority to modify the support provisions of a decree of dissolution to provide for college expenses for an adult child of the parties, at least until the child attains the age of twenty-two. *In re Marriage of Richards*, 439 N.W.2d 876, 879 (Iowa App. 1989). In considering such support, we take into account the financial conditions of the respective parents, the ability of the adult child to assist in paying for his or her expenses, the age of the child, and similar factors. *In re Marriage of Vrban*, 293 N.W.2d 198, 203 (Iowa 1980). We also consider the amendments to Iowa Code chapter 598. Effective July 1, 1997, the legislature deleted the college support provisions of Iowa Code section 598.1 and added new college support provisions in a new section 598.21(5A).

Prior to Matthew attaining the age of eighteen, Timothy paid $606 per month in child support pursuant to the decree of dissolution. Timothy maintains Matthew on his health insurance plan and gave Matthew a car with a value of about $2000. Matthew provides any further transportation expenses. Patricia provides food and shelter for Matthew at her Marshalltown home and provides small sums of money from time to time for extra things Matthew might need.

Patricia's cost of living exceeds $2500 per month, including a mortgage payment which increased considerably since the dissolution due to an increased loan needed for repairs to the home. Patricia did not adduce specific evidence as to the

amount of house expenses attributable to Matthew, nor did she provide specific evidence of the costs of meals, food, and other items she provided him. Absent this evidence, Timothy claims he should not be expected to contribute to Matthew's support because Patricia's house expenses remain roughly the same whether Matthew resides with her or not. Timothy further asserts his continual support constitutes a subsidization of Patricia's living expenses and does not constitute support for the adult child, Matthew.

Prior to the new amendments to chapter 598, trial courts evaluated the student's cost for room, board, tuition, and books, an then determined an equitable amount for each party to pay based on their respective incomes and ability to contribute to the student's college support. *See, e.g., In re Marriage of Linberg,* 462 N.W.2d 698, 702 (Iowa App. 1990); *In re Marriage of Richards*, 439 N.W.2d 876, 880 (Iowa App. 1989).

Timothy's annual gross income of approximately $50,000 supports a monthly stipend of $225 for Matthew. We think this amount is modest and that Timothy asks for too high a burden of proof to be imposed upon Patricia. We therefore affirm the determination of the district court as to the support payments to be made prior to July 1, 1997. Even under the new statute, we further conclude the trial court acted appropriately in determining this matter. All college support payments should be paid

pursuant to the provjsions of this section and we accordingly modify the decree to order Timothy pay his monthly support to Matthew.

Patricia asks for attorney fees resulting from this appeal. Attorney fees are a matter of discretion based upon the circumstances of the parties. We order Timothy to pay $750 of Patricia's appellate attorney fees.

Based upon the foregoing, the modification order of the district court is affirmed as modified.

AFFIRMED AS MODIFIED.