IN THE COURT OF APPEALS OF IOWA

No. 0-661 / 90-569

FILED
JUL 23 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF THOMAS P. MURPHY AND DEBORAH S. MURPHY

Upon the Petition of

THOMAS P. MURPHY,
Appellant,

And Concerning

DEBORAH S. MURPHY,
Appellee.

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Appeal from the Iowa District Court for Madison County, Robert O. Frederick, Judge.

The husband appealed a district court order modifying an earlier dissolution decree by increasing his child support obligation. **AFFIRMED.**

James A. Pugh of Morain, Burlingame, Pugh, Juhl & Peyton, West Des Moines, for appellant.

Everett H. Albers of Denman & Albers, Des Moines, for appellee.

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

OXBERGER, C.J.

This case is an application for a modification of a decree of dissolution. The district court set forth more specific visitation provisions, increased the husband's child support obligation, and ordered the parties to equally divide any medical bills not paid by insurance. The husband appealed. We affirm.

Thomas and Deborah Murphy were married in March 1982. They had one child, Benjamin Murphy, who was born on October 7, 1982. During the marriage the parties lived in a rural area near Winterset, Iowa.

Thomas filed a petition for dissolution of marriage in June 1983. The parties entered into a stipulation which gave Thomas physical care of Benjamin and divided the marital property between them. A dissolution decree was entered by the district court on September 12, 1983, based on the stipulation. The court did not make any factual findings about the parties' financial condition. An affidavit of financial status filed by Thomas at that time showed he had a gross income of $600 per month.

After the original decree Deborah gradually took over the physical care of Benjamin. In August 1984 Thomas moved to Ankeny in order to attend tool and die school at Des Moines Area Community College. Thomas was responsible for transporting Benjamin to and from Ankeny for visitation. Both parties had subsequently remarried.

Thomas filed an application for modification in September 1985. The district court entered a modification order to reflect the changed circumstances of the parties. The parties were awarded joint custody of Benjamin, with Deborah having physical care. Thomas was given the right to reasonable visitation. Thomas was ordered to pay $125 per month in child support.

Thomas graduated from trade school in 1986. Deborah filed an application for modification in October 1986 seeking an increase in child support. Because Thomas was then employed full-time his child support obligation was increased to $210 per month.

Eventually in October 1987 Thomas moved to Peru, in the Winterset area, in order to be closer to Benjamin. However, in November 1988 Deborah moved to Monroe.

Thomas filed an application for modification in July 1989 because he had been transporting Benjamin to and from Winterset for visitation, and he felt Deborah should share in this burden. Deborah also then filed an application for modification seeking an increase in child support.

The district court set forth a more specific visitation schedule. Thomas is responsible for picking up Benjamin at the beginning of a visitation period, and Deborah is responsible for picking him up at the end of a visitation period. Thomas' child support obligation was increased to $300 per month. Thomas may claim Benjamin as a dependent

on his income tax returns. Thomas is also responsible to carry the primary insurance for Benjamin. Thomas appealed.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Thomas contends his child support obligation should not have been increased. He claims there was not a substantial change in circumstances sufficient to warrant a change in child support. He feels the court modified his child support obligation based solely on a finding that he was paying less than the amount recommended by the child support guidelines. Thomas asserts that the scheduled amount under the guidelines should be sufficient to encompass all the needs of the child, so that he should not be required to pay any additional amounts for medical expenses.

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 burden rests on the party seeking modification to establish such a change in circumstances by a preponderance of the evidence. Id.

at 513. The change in circumstances must be permanent or continuous rather than temporary and the change must not have been in the contemplation of the trial court when the original decree was entered. In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983).

The knowledge of the trial court at the time the award is made is the basis for determining whether there has been a change of circumstances. In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). 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).

Standing alone, the child support guidelines now in effect do not constitute a change in circumstances as to a child support order entered before October 12, 1989. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). If, however, the district court finds such a change because of reasons other than the child support guidelines, then the court should consider the guidelines in making any change in the level of support. Id. at 869-70.

In the present case, the district court found there had been a substantial change in circumstances due to Thomas' increase in income since the previous modification. Thus, the district court's modification was not based solely on the enactment of the child support guidelines.

We agree with the district court's finding that there has been a substantial change in circumstances since the 1986 modification. Thomas and Deborah have both moved. The incomes of both parties have increased, although Thomas' has increased more substantially. We also agree with the court's application of the child support guidelines. We affirm the district court's modification of Thomas' child support obligation.

Because there was some confusion as to who was to carry medical insurance for Benjamin, we find the court's action making Thomas primarily responsible for the insurance to be equitable.

Thomas asks for attorney fees for this appeal. 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 387, 390 (Iowa App. 1987). 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).

We find that Thomas should be responsible for his own attorney fees.

AFFIRMED.