IN THE COURT OF APPEALS OF IOWA

No. 2-561 / 92-523

IN RE THE MARRIAGE OF JOHN ROSS COSTELLO AND KAREN KAY COSTELLO

Upon the Petition of
JOHN ROSS COSTELLO,
Petitioner-Appellant,

And Concerning
KAREN KAY COSTELLO,
Respondent-Appellee.

FILED
JUN 29 1993
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.

The husband appeals certain economic provisions of the district court's dissolution decree. **AFFIMED AS MODIFIED.**

David J. Winkelmann of Mollman & Wertz, Cedar Rapids, for appellant.

T. Todd Becker of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellee.

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

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OXBERGER, C.J.

John and Karen Costello were married in 1979. They have two children: Nicole, born on October 2, 1985; and Danielle, born on March 20, 1987. The parties lived in Cedar Rapids during the marriage.

John filed a petition for dissolution of marriage in November 1990. The district court entered a temporary order in the case on February 8, 1991. Karen was awarded primary physical care of the children. John is employed by the United States Post Office. At the time of the temporary hearing he apparently had net monthly income of about $2,246. This income was based on John's regular income plus overtime. Karen was at that time temporarily unemployed. The district court ordered John to pay child support of $674.69 per month.

John filed an application to reconsider the award of child support. He stated that overtime was no longer available to him. The district court found there had been no material and substantial change in circumstances since the previous order. The court denied John's application to reconsider.

The trial in this case was held on September 17, 1991. At that time John had income of $32,136, and net monthly income of $1,809. John testified that this reduction in his net income was due to the fact that overtime was no longer available to him. Also, he could no longer declare Karen and the children as dependents, and thus his income

tax obligation had increased. Karen had become re-employed at Quaker Oats, where she earned about $28,000, and had net monthly income of $1,552.

The parties entered into a stipulation on several issues. They agreed to joint legal custody of the children, with Karen having primary physical care. The parties also agreed to a visitation schedule. John agreed to pay $674 per month in child support. The parties agreed there would be no award of alimony. They stipulated to the value of most of their assets. They decided to sell the marital residence. The issues remaining for the court were apportionment of the costs of the children's parochial school education, property division, attorney fees, and court costs.

The district court issued a decree of dissolution on November 21, 1991. The court approved the stipulation. The court divided the parties' property to award John assets valued at $36,318 and Karen assets worth $27,211. In order to equalize the division of property, the court awarded Karen the first $9,107 of net proceeds from the sale of the house. The balance of the net proceeds were to be divided equally between the parties.

The court ordered each party to be responsible for one-half of the children's parochial school tuition. John was ordered to pay $750 towards Karen's attorney fees and $1,435 for the fees of the attorney for the children.

John filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). He stated that under the child support guidelines he should only be required to pay $588 per month in child support. He claimed that he had agreed to pay $674 per month because he believed he would not then be required to contribute to the cost of sending the children to parochial school. The district court denied his motion. John then appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

John contends he should not be required to pay an amount of child support in excess of the amount required by the child support guidelines in addition to parochial school tuition. John and Karen agreed the children should go to parochial school. Karen testified the cost of parochial school was $450 per year for Nicole, and would be between $700 to $800 per year when both Nicole and Danielle attended school. John states he is willing to pay one-half of the cost of tuition if his child support obligation is reduced to $588.

Karen admits that, considering John's current net monthly income, he is paying a greater amount of child support than that required by the guidelines. She claims

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that under the guidelines he should be paying $638. Karen believes, however, that John's reduction in income is voluntary, and the district court correctly ordered him to pay child support of $674 per month.

At the trial John stated that the reduction in his overtime hours was not voluntary. He testified his supervisor had decided not to offer overtime hours to any employees. We conclude John's reduction in income was not voluntary.

We determine John expressly agreed in the stipulation and in his testimony in court to pay child support of $674 per month. The parties both recognize that this amount is greater than the amount John is required to pay under the child support guidelines. John testified that he agreed to pay $674 per month with the understanding that he would not be responsible to contribute to the cost of the children's parochial school education. Thus, we conclude John should continue to pay $674 per month in child support. However, we find John should not be required to pay one-half of the parochial school tuition. We modify the dissolution decree to make this change.

Karen asks for attorney fees for this appeal. We determine each party should pay his or her own attorney fees. We assess the costs of this appeal one-half to each party.

AFFIRMED AS MODIFIED.