FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF EFFIE M. BLAKE AND MICHAEL C. BLAKE

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Upon the Petition of)
EFFIE M. BLAKE,)
Petitioner-Appellee,)
And Concerning)
MICHAEL C. BLAKE,)
Respondent-Appellant.)

Filed January 27, 1988

7-288
86-1554

Appeal from the Iowa District Court for Warren County (DM #4-104), Rodney J. Ryan, Judge.

Respondent appeals an adverse decision in a modification of the parties' decree of dissolution. **AFFIRMED.**

Mason J. Ouderkirk of Ouderkirk Law Firm, Indianola, for respondent-appellant/cross-appellee.

Leslie Babich of Babich, Bennett & Nickerson, Des Moines, for petitioner-appellee/cross-appellant.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J. 23

The respondent, Michael Blake, appeals an adverse decision in a modification of the parties' decree of dissolution. The petitioner, Effie Blake, cross-appeals those orders adverse to her. The respondent claims the trial court erred in: (1) finding the petitioner had shown a substantial change of circumstances since the entry of the original decree of dissolution; (2) increasing the respondent's child support payments; (3) ordering respondent to pay two-thirds of medical and extracurricular school expenses; and (4) awarding petitioner $500 for her attorney fees. The petitioner argues that the trial court erred in: (1) not sufficiently increasing the respondent's child support obligation; (2) not ordering an increase in the child support obligation retroactive to the date of filing the application for modification; and (3) failing to require the respondent to pay the full amount of her reasonable attorney fees and costs of the action. Our scope of review is de novo. Iowa R. App. P. 4. We affirm.

Michael C. Blake and Effie M. Blake were married in 1976. They had two children: Brady, born in 1976, and Mandy, born in 1978. Their marriage was dissolved in 1980. Michael was to pay child support of $50 per week per child, to be increased by 5% every two years. Effie then made about $2,349 per year as a waitress and Michael's income was $23,082 as a meat cutter for Hy-Vee Foods. Effie is now earning about $7,400 per year as a bartender. Michael remarried in 1982. He earned about $32,000 in 1986. His current wife, Sheila, earned approximately $22,000 in 1986. Brady has been diagnosed as having a learning disability problem which has required counseling and special tutoring.

Iowa Code section 598.21(8) provides that a court may modify a dissolution decree when there has been a showing of a substantial change in circumstances since the entry of the original dissolution decree. Michael claims that Effie

has not shown a substantial change in circumstances. Having reviewed the entire record, we believe the trial court correctly found a substantial change in circumstances. There is evidence that the physical and social needs of the parties' two children have changed. Also, Michael's income has increased substantially. Effie's income, although also increased from the level at the time of the dissolution, apparently is still inadequate to meet the increased and changing needs of the children. The Iowa Supreme Court in Pucci v. Pucci, 259 Iowa 427, 432-33, 143 N.W.2d 353, 357 (1966), stated that in modification actions, a controlling consideration is the children's welfare. In light of the children's increased needs, coupled with Michael's significantly greater income, we conclude that the trial court was correct in finding there to be a substantial change in circumstances. To deny a modification would be to ignore the children's best interests.

Having determined that there was a substantial change in circumstances, we now review whether the modified amount of child support was correct. Michael argues that the trial court should not have increased his child support obligation from $57.50 per week per child to $75.00 per week per child. Effie contends that the trial court did not sufficiently increase Michael's child support obligation. She asks for $85.00 per week per child. The factors to consider in setting an amount for child support are listed in section 598.21(4) of the Iowa Code. Considering the increased social and physical expenses and the needs of growing children, we believe the modified child support obligation established by trial court was proper. We decline to order, as requested by Effie, that the increased child support obligation be applied retroactive to the date of filing the application for modification.

Michael also claims that the trial court erred in ordering him to pay two-thirds of all medical, hospital, dental, orthodontic, optical, psychological.

tutoring, counseling and reasonable extracurricular school activity expenses incurred for the benefit of the children and not covered by insurance. Michael claims that Effie has failed to show a substantial change of circumstances with regard to these expenses and activities which would authorize modification. As noted earlier, Effie's income has not kept pace with the expenses and needs of the two children. In contrast, Michael's income has increased significantly. We therefore believe that the trial court was justified in ordering Michael to pay two-thirds of the expenses listed above.

Michael argues that the trial court erred in awarding Effie $500 toward her attorney fees and requiring him to pay the costs of this action. Michael asserts that he should not be required to pay Effie's attorney fees when her case lacks merit. Effie requests us to order Michael to pay the total amount of her reasonable attorney fees and costs. In addition, Effie requests an award of reasonable attorney fees and other costs associated with the appeal. An award of attorney fees is generally based on the parties' respective abilities to pay. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). We affirm the trial court's $500 award of attorney fees to Effie and also order that Michael shall pay an additional $500 toward Effie's appellate attorney fees. Finally, Michael is ordered to pay the costs on appeal.

AFFIRMED.