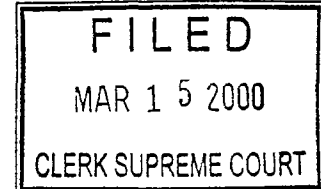


IN THE COURT OF APPEALS OF IOWA

No. 1999-343 (9-596) / 98-1637
Filed March 15, 2000

**IN RE THE MARRIAGE OF RANDY GORDON DEETS
AND HELEN R. DEETS**

Upon the Petition of
RANDY GORDON DEETS,
Petitioner-Appellee,



And Concerning
HELEN R. DEETS n/k/a HELEN KARAMITROS,
Respondent-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, J.W. Frye,
Judge.

The respondent appeals from a district court ruling denying her request for
the establishment of a post-high school education subsidy for the parties' minor
child. **AFFIRMED AS MODIFIED.**

Mark A. Young of Young Law Office, Mason City, for appellant.

Christopher F. O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl,
New Hampton, for appellee.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

PER CURIAM

Helen Karamitros, formerly known as Helen Deets, appeals the district court decision denying her request for the establishment of a post-high school education subsidy for the parties' minor child. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

A dissolution decree for Randy and Helen Deets was entered by the district court on January 29, 1988. The parties had two minor children, Randi Ann, born in August 1979, and Sara, born in September 1981. The children were placed in the primary physical care of Helen.

The dissolution decree incorporated the parties' stipulation. The decree provided Randy had an obligation to provide for the children if they attended college, as follows:

That husband's support obligation for a child, while so pursuing a post-high school education, shall include tuition, books, incidentals, room, board and reasonable and necessary living and clothing expenses. . . . That in the event there is a dispute with respect to the amounts which husband should reasonably be required to pay for each child during such post-high school education period the court hereby expressly reserves jurisdiction to review and set such amounts upon the application of the wife, either child of the parties, or husband.

In May 1998, Helen filed an application to review the stipulation and establish support for Randi Ann while she attended college. Randi Ann intended to attend Pasadena City College in Pasadena, California. Her room, board, tuition, books, and living expenses were expected to be about \$12,450 per year. Helen asked to have Randy responsible for all of these costs.

The district court determined Iowa Code section 598.21(5A) (1997) applied to limit Randy's responsibility for Randi Ann's postsecondary education expenses. Randi Ann obtained a part-time job in California, which would give her annual income of about \$10,400. She expected to obtain a student loan of \$2625.¹ In addition, Randy was the custodian of an account, in the amount of \$13,982, held for Randi Ann under the Iowa Uniform Transfers to Minors Act, chapter 565B. Randy agreed to pay Randi Ann \$325 per month from this account. The district court concluded Randi Ann had sufficient funds for her college education and denied the request for additional postsecondary education support. Helen appealed.

I. Our review of this equitable matter is de novo. Iowa R. App. P. 4. We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Helen contends the stipulation between the parties was contractual in nature. She believes the adoption of section 598.21(5A) should not allow Randy to escape his obligations under the stipulation.

A stipulation and settlement in a dissolution proceeding is a contract between the parties; however, it becomes final only when accepted and approved by the court. *In re Marriage of Handeland*, 564 N.W.2d 445, 446 (Iowa App. 1997). When a stipulation merges into a decree, it is then to be interpreted and enforced as a final judgment of the court, not as a separate contract between

¹ Randy claimed Randi Ann was also eligible for a Pell grant of \$2600, a school grant of \$400, and a government student loan of \$7500.

the parties. *Id.* It is the decree, and not the stipulation, which creates the parties' rights. *In re Marriage of Von Glan*, 525 N.W.2d 427, 430 (Iowa App. 1994).

We determine section 598.21(5A) should not apply in this case. The dissolution decree was entered in 1988. Neither of the parties filed a petition for modification. Helen filed an application to review the decree and establish postsecondary education support for Randi Ann. In these circumstances, we are bound by the terms of the dissolution decree. See *In re Marriage of Hull*, 491 N.W.2d 177, 178 (Iowa App. 1992). Section 598.21(5A) should only be applied prospectively. *In re Marriage of Williams*, 595 N.W.2d 126, 130 (Iowa 1999). We do not apply it to the unmodified provisions of a dissolution decree which was entered before the effective date of the statute. *Id.* (overruling *In re Marriage of Griffin*, 570 N.W.2d 258 (Iowa App. 1997)).²

III. In our de novo review, we turn to the issue of interpreting the parties' dissolution decree. The decree provides that if there is a dispute with respect to the amount Randy should reasonably be required to pay, on the application of Helen, Randy, or either of the children, the district court may set the amount. This is what happened in the present case. The court noted Randy had pledged the use of \$325 per month from the custodial account he held on Randi Ann's behalf. This amounts to \$3900 annually.

A divorced parent should be required to assume only a reasonable portion of a child's education expenses. *In re Marriage of Hasley*, 433 N.W.2d 40, 41 (Iowa App. 1988). What is reasonable must be determined by examining the

² In doing so, we reach the issue reserved in *Williams*. See *Williams*, 595 N.W.2d at 130, n.2. (not reaching question of whether new law applied to 1986 stipulation and agreement).

parents' financial resources and the child's educational needs. *In re Marriage of Lieberman*, 426 N.W.2d 683, 686 (Iowa App. 1988). A noncustodial parent cannot equitably be obligated to assume a child's educational expenses at any college or university that the child may select without regard to the parent's preferences or to his or her financial resources. *In re Marriage of Frink*, 409 N.W.2d 477, 481 (Iowa App. 1987) (emphasis in original).

Generally, a parents' responsibility has been limited to the cost of attending a state-supported institution in the state of the child's residence. See *Williams*, 595 N.W.2d at 131; *In re Marriage of Springer*, 538 N.W.2d 897, 901 (Iowa App. 1995); *In re Marriage of Hess*, 522 N.W.2d 861, 864 (Iowa App. 1994); *In re Marriage of Van Ryswyk*, 492 N.W.2d 728, 732 (Iowa App. 1992); *In re Marriage of Fountain*, 492 N.W.2d 707, 710 (Iowa App. 1992); *In re Marriage of Linberg*, 462 N.W.2d 698, 701 (Iowa App. 1990); *In re Marriage of Boehlje*, 443 N.W.2d 81, 84 (Iowa App. 1989); *In re Marriage of Richards*, 439 N.W.2d 876, 880 (Iowa App. 1989); *Lieberman*, 426 N.W.2d at 686; *In re Marriage of Smith*, 351 N.W.2d 541, 543 (Iowa App. 1984).

Evidence was presented to show Randi Ann could attend an Iowa institution at an annual cost of about \$7000 to \$10,000. Based on Randi Ann's resources, including income and potential loans and grants, the district court's decision requiring Randy to pay \$325 per month for Randi Ann's college expenses is equitable.

IV. Helen claims it was improper to allow Randy to pay his obligation for Randi Ann's college expenses from the account he held on her behalf. The

district court noted it did not have jurisdiction to order Randy to use funds from the custodial account for Randi Ann's college expenses because there had been no petition, pursuant to section 565B.14(2), for the court to order use of the custodial funds.³

Because we also do not have jurisdiction to order Randy to use the interest from the custodial account to pay for Randi Ann's college expenses, we order that if Randy does not use the funds from the custodial account for this purpose, he should be obligated to pay Randi Ann \$325 per month from his own funds. These payments should continue as provided in the terms of the dissolution decree.

We affirm the decision of the district court. Costs of this appeal are assessed to Helen.

AFFIRMED AS MODIFIED.

³ Section 565B.14(2) provides:

On the petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.