IN THE COURT OF APPEALS OF IOWA

No. 0-747 / 10-0437
Filed January 20, 2011

IN RE THE MARRIAGE OF KAYLENE A. WHITE AND RONALD WHITE

Upon the Petition of

KAYLENE A. JENNINGS
f/k/a KAYLENE A. WHITE,
Petitioner-Appellant/Cross-Appellee,

And Concerning

RONALD WHITE,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Appeal from the district court's award of a postsecondary education subsidy. **REVERSED AND DISMISSED.**

Barry Kaplan and Melissa Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant.

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

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Kaylene A. Jennings appeals, challenging the district court's decision to award a postsecondary education subsidy for her two sons. She contends because she and Ronald White were divorced in Alaska, where there is no statutory provision for a postsecondary education subsidy, that the Iowa court was without authority to make the award. We reverse and dismiss.

BACKGROUND AND PROCEEDINGS. Ronald White and Kaylene Jennings were both residents of the State of Alaska when their marriage was dissolved in March of 2002. The Alaskan decree provided they share legal and physical custody of their sons born in 1989 and 1991. The decree provided for child support but did not address college expenses. The Alaskan decree was modified in Alaska in October of 2002[1] at which time the children and Kaylene moved to Iowa where she established residency. The boys graduated from Iowa high schools[2] and currently are attending college.

In May of 2009, Ronald, who remains a resident of Alaska, filed an application in the Iowa courts to modify the Alaskan decree contending, among other things, that the Iowa court should establish a college subsidy for his two sons.[3] Kaylene challenged the jurisdiction of the Iowa court to modify an Alaskan decree to award a college subsidy. The Iowa district court determined it had original subject matter jurisdiction to consider the college subsidy issue,

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[1] There also was no provision addressing college expenses in the modified decree.

[2] Apparently during this period the parties made certain agreements with reference to child support, but no further modifications of the Alaskan decree were made.

[3] At some point of the proceedings Ronald sought to make his sons parties. Any rights for the subsidy come under Iowa Code chapter 598 (2009); consequently, whether the parties are Ronald or the children, the same result must be reached.

concluding that Kaylene, a resident of Iowa, was subject to the jurisdiction of the Iowa court. The court, citing *In re the Marriage of Funderburk*, 696 N.W.2d 607, 610-11 (Iowa 2005), determined that an original decree of dissolution need not contain a college support provision in order for it to be addressed and established at a later time. The court established a college subsidy and ordered each parent to pay one-third of each child's expenses based on in-state tuition. One son was attending Iowa State as an Iowa resident, and the second son was attending the University of Hawaii and is paying resident tuition because Hawaii grants in-state tuition to residents of Alaska.[4]

Kaylene appealed, contending (1) the Iowa courts do not have the authority to add a postsecondary-education-subsidy provision to the decree of a state that does not provide statutorily for such a subsidy, (2) the Iowa court erred in failing to recognize an agreement made by the parties as to the children's college expenses, and (3) the district court did not properly calculate the subsidy. She also contends she should have been awarded trial attorney fees, and we should order Ronald to pay her appellate attorney fees. Ronald cross-appealed, contending (1) it was proper for the district court to apply a retroactive subsidy, (2) Kaylene did not prove promissory estoppel, and (3) Kaylene should pay costs and attorney fees.

DISCUSSION. Both children are adults. Generally a parent is not legally required to provide financial support to an adult child. In *Johnson v. Louis*, 654 N.W.2d 886, 888 (Iowa 2002), the court said:

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[4] Because of our holding we need not decide whether the child is a resident of Iowa or Hawaii.

> At common law a parent's obligation to support his or her child ends when the latter becomes of age, unless the child is physically or mentally unable to care for itself. At common law the time one became of age was twenty-one. In Iowa this age was lowered by statute to nineteen in 1972. The following year it was lowered to eighteen. It has remained at this age ever since, except as altered by statute in specific situations . . . .

Johnson, 654 N.W.2d at 888.

In Iowa, certain provisions of chapter 598 alter the common law in that the Iowa legislature has statutorily provided a court may order a postsecondary education subsidy under certain conditions for a child who is between eighteen and twenty-two years of age. *See* Iowa Code §§ 598.1(8), 598.22F (2009). These statutes make provisions to ensure that divorce between parents will not become a financial impediment to a child's college education. *See generally Johnson*, 654 N.W.2d at 891. The educational benefit is a quid pro quo for the loss of stability resulting from divorce. *See In re Marriage of Sullins*, 715 N.W.2d 242, 253 (Iowa 2006); *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980). Not all states provide such a statutory subsidy. Alaska is one of the states that does not now, and did not at the time the Alaskan decree and modified decree here were entered, make a statutory provision for a college subsidy. Nor do the controlling Alaska cases support such an award. In *Dowling v. Dowling*, 679 P.2d 480, 483 (Alaska 1991), the court addressed a custodial parent's claim to modify a child support provision in an initial decree so as to provide for postsecondary education expenses. In denying the request the court said, "We are not convinced that the legislature intended to provide for post-

majority educational support in either an original decree, or in a modification of the original decree." *Dowling*, 679 P.2d at 483.

The court also commented in a footnote that: "Of course, divorcing parents can still enter into an agreement to provide for the post-majority educational support of their children, and have the agreement made part of the judgment so that it will be enforceable." *Id.* at 483 n.7.

The Alaska court addressed the issue again in *H.P.A. v. S.C.A.*, 704 P.2d 205, 209-10 (Alaska 1985), and in discussing an Alaskan statute that provides in a divorce action, a court may require the parties to make payments "toward the nurture and education of their children" said, citing *Dowling*, "This section does not confer on a court the power to require a party to make payments towards post-majority education, typically college education." *H.P.A.*, 704 P.2d at 209.

In *H.P.A.*, the trial court found in a modification proceeding that the parents should share a child's college expenses equally, not under Alaska law, "but for the fact that the parents have already made substantial contributions to [the child's] present estate, at least partially to cover the necessity for college expenses." *Id.* at 209 n.2. The Alaska Supreme Court, in overruling the trial court said:

> the trial court emphasized the parties contributions to a fund designed partially to pay future college expenses. The court felt empowered by the existence of the fund to make this order, as if it were merely giving effect to the manifested intentions of the parties. The court has overestimated the extent of its own powers. If Husband and Wife had contracted to share the costs of Child's college education the court could certainly enforce that voluntarily assumed obligation. No such contract is involved here. The rule of *Dowling* is clear and cannot be ignored: when a husband and wife with children divorce, the court cannot require either parent to pay

for post-majority college education.

Id. at 209-10.

These cases support the argument that because the Alaskan decree here was silent on the issue of a college subsidy, the issue of a college subsidy as a result of this divorce could not be raised in subsequent modification proceedings. Giving full faith and credit to the Alaskan decree, we conclude the Iowa court should not have established an educational subsidy.

Even if this were not the case, we also believe that the statutory provisions in Iowa for fixing a college subsidy are only available when dissolution is granted under the provisions of Iowa Code chapter 598. In *Johnson*, 654 N.W.2d at 889, the supreme court reviewed the provisions of that chapter and determined this court was correct in concluding that:

> based on the applicable statutory law Michael [father of a child born out of wedlock] was under no obligation to provide any type of child support for Jared [the child] after Jared attained his eighteenth birthday.

We believe that same reasoning applies here, and the only time the provisions for a college subsidy under 598 are applicable is if the divorce is being granted or has been granted in Iowa under the provisions of chapter 598. For these reasons we reverse and dismiss the action finding it unnecessary to address the other issues on appeal.

We award no appellate attorney fees finding no basis to do so.

REVERSED AND DISMISSED.