IN THE COURT OF APPEALS OF IOWA

No. 1-365 / 10-1879
Filed June 29, 2011

IN RE THE MARRIAGE OF BARBARA RAE ANGOVE AND GARLAND WAYNE ANGOVE

Upon the Petition of

BARBARA RAE ANGOVE,
n/k/a BARBARA RAE HAMLYN,
Petitioner-Appellant,

And Concerning

GARLAND WAYNE ANGOVE,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Barbara Angove appeals the district court's dismissal of her application for rule to show cause to hold Garland Angove in contempt. **REVERSED AND REMANDED.**

Joseph R. Sevcik, Cedar Falls, for appellant.

John J. Wood, Waterloo, for appellee.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

This case presents the question whether a stipulation signed by divorced parents required them to continue making postsecondary education subsidy payments for their daughter after she completed her undergraduate degree. Barbara Angove appeals the district court's dismissal of her application for rule to show cause to hold her ex-husband, Garland Angove, in contempt. Barbara and Garland signed a stipulation requiring both parties to pay a postsecondary education subsidy to their daughter, Callie, for five years. Barbara applied for rule to show cause after Garland stopped making payments when Callie earned her undergraduate degree in four years and enrolled in a graduate program. Garland argues he is not obligated to pay the postsecondary education subsidy for graduate school costs. Because we find that Garland and Barbara's stipulation provided for five years of postsecondary education subsidy payments and did not limit their obligation to only undergraduate program expenses, we reverse the district court's dismissal of Barbara's contempt action and remand for a hearing on the merits of the action.

I. Background Facts and Proceedings

Barbara and Garland divorced in 1990. In 1994, the court entered a modification of dissolution decree that stated: "the support obligation can be extended or the court may look at the expenses for the child who is seeking higher education and may assess child support or expense help to be paid." A subsequent order for modification filed on May 30, 2000, provided that the court

"shall retain jurisdiction to determine whether postsecondary education subsidies shall be awarded for the benefit of . . . Callie Kay Angove."

In accord with these modifications, on June 16, 2006, Barbara commenced an action for a postsecondary education subsidy to benefit Callie, who was born in May 1988. Barbara and Garland stipulated to an agreement, which was incorporated into the modified decree on July 31, 2006. The stipulation provided that both parents would pay educational expenses "for each school year that Callie attends the University of Northern Iowa as a full time student," based upon costs and expenses as published by the university. Payments were to be made monthly to Callie, "commencing June 16, 2006, and continuing on the 16th day of every following month until May 16, 2011, or until she is no longer enrolled as a full time student, whichever first occurs." The stipulation also addressed recalculation for expenses in the event Callie attends college elsewhere or attends classes during the summer.

Garland stopped making payments following Callie's graduation from the University of Northern Iowa (UNI) in May 2010, despite Callie's enrollment in a graduate school program beginning August 2010. In a letter to Callie, Garland refused to make further payments unless Callie agreed, in writing, to include him in her life and "establish a father/daughter relationship" with him.

In response to Garland's refusal to make further payments, Barbara applied for rule to show cause on July 2, 2010. Garland resisted the application, arguing that a postsecondary education subsidy does not require payment for graduate school expenses of an adult child. Garland then subpoenaed the UNI

records custodian requesting a complete copy of Callie's student file. Barbara moved to quash the subpoena, contending Garland had no right or other privilege to most of the requested information and that the information was not relevant to any issue before the court. Barbara offered to provide a statement from UNI attesting to the fact that Callie remains a full-time student and noted that Garland previously received copies of all of Callie's grade reports. At an August 23, 2010 hearing regarding the motion to quash the subpoena, counsel for the parties presented their positions on the underlying issues related to the postsecondary education subsidy, as well as their positions on the motion to quash the subpoena.

On October 12, 2010, the district court dismissed the application for rule to show cause and also dismissed the motion to quash the subpoena as moot. The court concluded "postsecondary education subsidy," as defined by section 598.1(8), limits the subsidy obligation to when a child is "between the ages of eighteen and twenty-two years," and therefore Garland's obligation under the stipulation terminated upon Callie's twenty-second birthday. Barbara appeals from the dismissal.

II. Scope and Standard of Review

On an appeal from an equitable proceeding, the scope of review is normally de novo. *Lett v. Grummer*, 300 N.W.2d 147, 148 (Iowa 1981). But our scope of review from an order granting a motion to dismiss is for correction of legal error. *See Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999). To the extent this appeal involves an interpretation of Iowa Code sections

598.21F and 598.1(8) (2009), we review for the correction of errors at law. Iowa R. App. P. 6.907; *State v. Blakley*, 534 N.W.2d 645, 647 (Iowa 1995). In reviewing matters of law, our court is not bound by the district court's ruling. *City of Burlington v. Citizens to Protect Our Freedom*, 214 N.W.2d 139, 141 (Iowa 1974).

III. Analysis

Although the district court held that Garland's obligation under the stipulation terminated upon Callie's twenty-second birthday, the correct interpretation of "between the ages of eighteen and twenty-two" in section 598.1(8) allows children to qualify for a postsecondary education subsidy so long as they are older than seventeen but younger than twenty-three. *See In re Marriage of Neff*, 675 N.W.2d 573, 581 (Iowa 2004). Our supreme court addressed this issue, stating, "[g]iven the traditional ages at which students attend college, the ages which define this timeframe should be read inclusively." *Id.* In accord with this inclusive interpretation of the age range in section 598.1(8), Garland's obligation to pay a postsecondary educational subsidy was not automatically extinguished upon Callie's twenty-second birthday; rather, his obligation continued through the duration of that year—while Callie was twenty-two—and did not cease until immediately before her twenty-third birthday. The stipulation's provision that the final subsidy payment be made before Callie's twenty-third birthday is consistent with our supreme court's inclusive interpretation of "between the ages of eighteen and twenty-two." Therefore, the

age limitation in section 598.1(8) does not limit Garland's obligation under the stipulation.

The question we then face is whether the Angoves' stipulation—which closely tracks the statutory provision—contemplates that the parents may be obliged to make postsecondary education subsidy payments beyond Callie's undergraduate graduation. To the extent the statutory definition of "postsecondary education subsidy" in section 598.1(8) informed the parties' intent in reaching their stipulation, that provision did not limit the subsidy to undergraduate tuition payments. Section 598.1(8) does not specify that a child qualifies only when attending undergraduate school, but instead states that a child is eligible if the child is "regularly attending a course of vocational-technical training . . . or is, in good faith, a full-time student in a college, university, or community college." Iowa Code § 598.1(8). It is a basic rule of statutory construction that we must "'give effect, if possible, to every clause and word of a statute.'" *TLC Home Health Care, L.L.C. v. Iowa Dep't of Human Servs.*, 638 N.W.2d 708, 713 (Iowa 2002) (citation omitted). In doing so, we presume "that no part of an act is intended to be superfluous." *Id.*

With this in mind, we may infer that the legislature included "university" in the list of approved programs because "university" has a different meaning than "college," otherwise the legislative drafters would not have included both terms. "Absent legislative definition or a particular and appropriate meaning in law, we give words their plain and ordinary meaning." *State v. Ahitow*, 544 N.W.2d 270, 272 (Iowa 1996). Neither the Iowa code nor Iowa case law defines the term

"university" in the context of a postsecondary education subsidy. In the absence of a legislative definition, we may consult the dictionary to give words their plain and ordinary meaning. *Lauridsen v. City of Okoboji Bd. of Adjustment*, 554 N.W.2d 541, 544 (Iowa 1996); *see* Iowa Code § 4.1(38). The dictionary defines "university" as:

> An institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees; *specifically*: one made up of an undergraduate division which confers bachelor's degrees and a graduate division which comprises a graduate school and professional schools each of which may confer master's degrees and doctorates.

Webster's Collegiate Dictionary 1370 (11th ed. 2004). Taking into consideration the plain meaning of the word "university" as it appears in section 598.1(8), it does not appear the legislature intended to limit postsecondary education subsidies solely to undergraduate degrees. Accordingly, a graduate program at UNI would qualify under section 598.1(8).

Garland points out that the calculation for a postsecondary education subsidy in section 598.21F is based upon the "cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree." He asserts that section 598.21F signals the legislature's intent to limit the subsidy to the cost of schooling necessary to obtain an undergraduate degree. Barbara counters that section 598.21F applies only to the manner of calculating the subsidy and does not limit the type of degree that the court may order a parent to subsidize.

In statutory interpretation, we consider the context within which words are used. Iowa Code § 4.1(38); *Ahitow*, 544 N.W.2d at 272. Although the calculation

is based upon the cost of in-state public tuition, this provision does not prevent a student from enrolling in a program that is more expensive than an in-state public program. Rather, the calculation limits the parents' required contribution in the event a child enrolls in a more expensive program. Furthermore, the fact that the calculation for a postsecondary education subsidy is based upon the cost of an undergraduate degree, and yet the legislature did not also expressly limit section 598.1(8) to undergraduate degrees, leads to the conclusion that the omission of the undergraduate limitation was intentional. Read together, sections 598.1(8) and 598.21F indicate that the legislature intended to limit the cost to the parent but did not intend to limit the type of degree pursued by the child.

In addition, the allowable age range in section 598.1(8), when read inclusively, reinforces this interpretation. A student could begin an undergraduate degree at age seventeen, finish at age twenty-one, and then begin and complete a two-year graduate degree before reaching age twenty-three. Moreover, an ambitious child could conceivably complete an undergraduate and graduate degree in less than five years. Neither the age range nor the list of education programs covered excludes graduate school from the purview of the postsecondary education subsidy.

Finally, reading an exclusion of graduate study into the term "postsecondary education subsidy" would not serve the child's best interests. The parties agreed to make subsidy payments until May 16, 2011. Even if this agreement was based upon a desire to allow Callie an extra year to complete her undergraduate degree, it is counter-intuitive that Callie should be permitted extra

time to complete her schooling at a more leisurely pace, but be penalized for finishing her degree in four years and then pursuing a graduate degree. Reading "postsecondary education subsidy" to encompass only undergraduate study would remove the incentive for children to finish their undergraduate degree expeditiously in order to pursue a graduate degree.

The argument that the stipulation does not require Garland to make graduate school payments because such a requirement would conflict with sections 598.1(8) and 598.21F is without merit. As a term of art within the stipulation, "postsecondary education subsidy" does not limit subsidy payments to undergraduate expenses. Reading the stipulation as a whole, we find no language limiting the subsidy to undergraduate expenses. Although a stipulation is similar to a contract between the parties, when it is merged in the dissolution decree, it is interpreted and enforced as a final judgment of the court. *Prochelo v. Prochelo*, 346 N.W.2d 527, 530 (Iowa 1984). Therefore, the court need not consider the intent of the parties when entering the stipulation. *Id.* "'The determinative factor is the intention of the court as gathered from all parts of the judgment.'" *Cooper v. Cooper*, 158 N.W.2d 712, 713 (Iowa 1968) (citation omitted). The stipulation language is consistent with the postsecondary education subsidy statutory language, indicating that the court modeled the stipulation on section 598.21F and 598.1(8).

The stipulation does limit the subsidy, but the limits are based upon full-time attendance and a time range, not on the level of degree pursued. Nowhere in the stipulation is the postsecondary education subsidy explicitly restricted to

Callie's undergraduate expenses. Rather, the stipulation states that the parties shall pay for "each school year that Callie attends the University of Northern Iowa as a full time student," beginning June 16, 2006, and ending May 16, 2011. Garland argues that if the parties had intended to pay for Callie's graduate education, the stipulation would have provided for at least six years of payments. We find this argument unpersuasive. As stated above, it is possible for a student to earn both an undergraduate and graduate degree in five years. Without express terms addressing the level of degree pursued, there is no reason to conclude that the decree's five-year payment span controlled the type of degree pursued. Therefore, we find that Garland's obligation pursuant to the stipulation did not terminate upon Callie's attainment of an undergraduate degree and reverse the district court's dismissal of Barbara's contempt application.

We note that Barbara argues in her reply brief that the district court erred by dismissing the contempt action after the hearing to quash subpoena, but prior to a hearing on the merits. Normally, we do not address an argument raised for the first time in a reply brief. *Goodenow v. City Council*, 574 N.W.2d 18, 27 (Iowa 1998). But in this case, we agree the matter must be remanded for a hearing on the merits of the contempt action. We also observe this is the remedy Barbara sought in her opening brief. On remand, it is Barbara's burden to establish Garland's "willful disobedience by proof beyond a reasonable doubt." *See McKinley v. Iowa Dist. Ct.*, 542 N.W.2d 822, 824 (Iowa 1996). The district court should decide the merits of Barbara's contempt application consistent with this decision.

REVERSED AND REMANDED.