

**IN THE COURT OF APPEALS OF IOWA**

No. 6-488 / 05-0984  
Filed October 11, 2006

**IN RE THE MARRIAGE OF ADELINE L. LEPLEY  
AND ROBERT W. LEPLEY**

**Upon the Petition of  
ADELINE L. LEPLEY,  
n/k/a ADELINE L. REDMAN,**  
Petitioner-Appellee,

**And Concerning  
ROBERT W. LEPLEY,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge.

Robert Lepley appeals from a district court order that required him to pay a postsecondary education subsidy to his daughter. **AFFIRMED AS MODIFIED.**

James Waters, Ankeny, for appellant.

Jeanne Johnson, Des Moines, and Jacqueline Rypma, Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

**ZIMMER, J.**

Robert Lepley appeals from a district court order that required him to pay a postsecondary education subsidy to his daughter. He contends the district court erred in rejecting his claim of repudiation and in computing the amount of the subsidy. We affirm the ruling of the district court with some modification.

***I. Background Facts & Proceedings***

Robert and Adeline Lepley were divorced in 1995. The parties have one child, Nicole, who was born on October 25, 1986. Since the divorce, Adeline has had primary physical care of Nicole. Nicole turned eighteen in October 2004. She was accepted as a student at Simpson College for the fall 2005 term. Nicole planned to live with her mother while she attended college.<sup>1</sup>

Adeline is retired from the U.S. Postal Service. She receives a pension of \$1500 per month. Robert works as a supervisor of maintenance operations for the U.S. Postal Service. He earns \$52,000 per year.

On April 13, 2005, Adeline filed an application requesting that a postsecondary education subsidy be established for Nicole pursuant to Iowa Code chapter 598 (2005). Adeline agreed to pay a subsidy in the amount of one-third the cost of attending an in-state public institution, and she asked the court to order Robert to pay a postsecondary education subsidy in the same amount. Robert filed a resistance to Adeline's application. He claimed he should not be ordered to pay a subsidy because Nicole had publicly disowned and repudiated him.

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<sup>1</sup> Nicole has no independent means of support other than her parents.

Following a contested hearing, the district court found the cost of tuition and a partial meal plan at Simpson College for a student living off campus was \$23,803 per year and that Nicole would receive \$12,375 in scholarships and loans, reducing the cost to \$11,428. The court found the cost of tuition to attend Iowa State University was \$15,320, and the cost of tuition to attend the University of Iowa was \$15,696, for an average of \$15,508. The court concluded Nicole had not repudiated Robert and ordered Robert and Adeline to each pay \$5169 as a postsecondary education subsidy for Nicole. Robert now appeals.

## ***II. Scope & Standards of Review***

Under Iowa Code section 598.21(5A), a “court may order a postsecondary education subsidy if good cause is shown.” In determining whether good cause exists for ordering a subsidy, the court considers “the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent.” *Id.* § 598.21(5A)(a). If these factors fail to support good cause, no subsidy is necessary. *In re Marriage of Sullins*, 715 N.W.2d 242, 253 (Iowa 2006). We review the court’s restitution order de novo. Iowa R. App. P. 6.4. We give weight to the district court’s findings, but they are not binding. *In re Marriage of Pendergast*, 565 N.W.2d 354, 356 (Iowa Ct. App. 1997).

## ***III. Repudiation Claim***

Robert claims his daughter repudiated him, so he should not be required to pay a postsecondary education subsidy. Under Iowa Code section 598.21(5A)(c), the court cannot award a postsecondary education subsidy “if the

child has repudiated the parent by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner.”

When Nicole turned sixteen, she asked her father if she could have a more flexible visitation schedule rather than spend every other weekend at his home on a farm near Melcher because she was involved in extracurricular activities and wanted to spend more time with her friends. Robert interpreted this request to mean Nicole no longer wished to see him, and he told her to follow the visitation schedule in the decree or no longer come to his home. Since Nicole turned sixteen, she has had little contact with her father, and he has made little effort to see her. Robert testified he did not send her birthday or Christmas cards or gifts for several years, he did not attend her National Honor Society induction even though he was invited, and he did not intend to attend her high school graduation.

Robert filed a contempt action against Adeline for missed visitation in 2004, and the district court ruled Adeline was not in contempt. As part of the contempt action, the court ordered Robert and Nicole to attend counseling in an attempt to mend their relationship. Dr. Michael Hopkins, the counselor for Robert and Nicole, testified he was unable to reunite the father and daughter despite his best efforts. Dr. Hopkins stated Robert was unwilling to tell Nicole he loved her during counseling and was unable to leave the past behind. Nicole told her father she loved him and wanted to have a relationship with him.

Nicole and Robert met for lunch to discuss the present instead of past disputes, as instructed by Dr. Hopkins, but the meeting did not go well because Robert asked why Nicole had not visited him. Dr. Hopkins attempted to arrange

another visit, but Robert called his office and complained he used to be able to talk to Nicole on the phone, but now, he had to go through the doctor. The second visit never occurred.

At trial, Robert attempted to prove Nicole had repudiated him at a wedding reception for his son, Nicole's half-brother. Robert claimed Nicole spoke to various members of his family, but ignored him. He also claimed he did not attempt to speak to Nicole during the reception. Nicole testified that Robert approached her as she was leaving the reception, hugged her, and told her he loved her. Nicole also told Dr. Hopkins what occurred at the reception. Dr. Hopkins testified when Nicole told him about her father hugging her, she "sat in [his] office and sobbed and sobbed and sobbed." During Robert's testimony, he denied he had hugged his daughter and denied he told her he loved her at the reception. The district court noted, "At that point in the trial Nicole began to sob in the courtroom, and had to leave." Robert testified he felt like he was just a checkbook to Nicole.

Robert maintains the facts of this case when viewed in the light of *Pendergast*, 565 N.W.2d at 355, support his claim of repudiation. In *Pendergast*, the court held a daughter repudiated her father when she completely cut off her relationship with him, asked for the return of any personal property still in her father's possession, wrote him a letter telling him she "no longer considered him to be her father," failed to acknowledge him at funerals for his parents, and did not list him as a parent in the program for her high school graduation. *Id.* The record in this case reveals Nicole attempted to mend her relationship with her father rather than alienate him.

The district court concluded Robert failed to prove Nicole repudiated him.

The court stated:

She has never publicly disowned him, refused to acknowledge him, or acted in a similar manner. The court assigns the responsibility for the estrangement between Robert and Nicole to Robert. He has acted in a very immature manner in his relationship with Nicole. Because she will not follow rigid visitation guidelines, he refuses to see her at all. He does not attend her school functions. She wanted to visit him in his home with her boyfriend, and Robert refused. He testified that he didn't know the boy, and that he might be a "thug." This is typical of the excuses offered by Robert to justify his estrangement from Nicole. Nicole loves her father and would like to mend their relationship. She willingly participated in counseling with her father. She listed Robert as her father for an article in the high school newspaper. She contacted him about graduation announcements, but he did not respond. She would like him to attend her high school graduation and to visit Simpson for freshman orientation.

Upon our de novo review of the record, we agree with the district court findings and adopt them as our own. The record simply does not support the conclusion that Nicole repudiated her father.

#### ***IV. Computation of Postsecondary Education Subsidy***

Robert also contends the district court erred in computing the amount of the parties' postsecondary education subsidy. He maintains the court should have subtracted the amount of grants and loans Nicole would have been awarded at Simpson (\$12,375) from the average cost of attending an in-state public university (\$15,508). Subtracting \$12,375 from \$15,508 leaves \$3133. Robert argues he and Adeline should each have been ordered to pay \$1566.50, one-half of this balance.

In order for the court to determine the amount of the subsidy, the cost of the college education is determined based on the educational costs of attending

an in-state public institution. Iowa Code § 598.21(5A)(a)(1). The amount the child can reasonably expect to contribute, including contributions in the form of student loans, scholarships, and grants, is deducted from the cost figure. *Id.* § 598.21(5A)(a)(2)-(3). The amount that remains is apportioned to the parents, and the amount paid by each parent may not exceed one-third the cost of attending an in-state public institution. *Id.* § 598.21(5A)(a)(3).

In this case, the district court determined the cost of tuition and a partial meal plan at Simpson College for a student living off campus. The court then deducted the amount Nicole would reasonably expect to contribute, including contributions in the form of student loans and scholarships, and found that if each parent contributed one-half share of the difference, the amount exceeded one-third the total cost of postsecondary education at an in-state public institution. The court then computed the average cost to attend an in-state public institution and capped each parent's contribution at one-third the cost of an in-state school. Adeline contends the district court's approach was correct.

In a case decided after the district court ruled in this case, our supreme court recognized that our statutory scheme for calculating a postsecondary education subsidy can fall short of providing a complete solution in all circumstances. *In re Marriage of Sullins*, 715 N.W.2d 242, 254 (Iowa 2006). This is particularly true for students of divorced parents who desire to attend an out-of-state institution or a private, in-state college. *Id.*

In *Sullins*, a student attending an out-of-state institution received loans and federal work-study money in excess of the total costs of attending a public, in-state college, and the court found the statute did not require parents to

contribute to the college education costs when there was no evidence the student would not have been able to contribute similar amounts to a college education at an in-state college. *Id.* at 255. Although the district court's resolution of the postsecondary education subsidy issue in this case is not without equitable appeal, we believe the approach advocated by Robert is more consistent our supreme court's pronouncements in *Sullins*. Accordingly, we modify the district court's decree to provide that each parent's contribution to Nicole's postsecondary education subsidy is fixed in the amount of \$1566.50.

#### **V. Conclusion**

Because Robert failed to show his daughter repudiated him, the district court did not err in ordering a postsecondary education subsidy. We modify the court's decree to provide that the amount of the subsidy for Robert and Adeline shall be reduced to the sum of \$1566.50 for each parent. We award no appellate attorney fees. The costs of this appeal are taxed one-half to each party.

**AFFIRMED AS MODIFIED.**

Sackett, C.J., concurs; Vogel, J., concurs specially.

**VOGEL, J.** (concurring specially)

I agree there was no evidence presented that Nicole would not have been able to secure similar loans, scholarships, and grants had she chosen to attend a state school. See *In re Marriage of Sullins*, 715 N.W.2d 242, 253-55 (Iowa 2006). However, the converse is also true: there was no evidence presented that Nicole would have been able to secure similar financial assistance at a state school. It is an artificial assumption that the financial assistance Nicole was offered to attend Simpson College would have been available had she chosen to attend a state public institution. Nonetheless, the lack of proof on this issue to support either position requires the result as crafted by the majority.