IN THE COURT OF APPEALS OF IOWA

No. 6-643 / 06-0275
Filed September 21, 2006

IN RE THE MARRIAGE OF JON H. SWAILS AND RONDA M. SWAILS

Upon the Petition of
JON H. SWAILS,
Petitioner-Appellee/Cross-Appellant,

And Concerning
RONDA M. SWAILS,
n/k/a RONDA M. DENEUI,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

A wife appeals the district court's denial of her request for reimbursement of expenses for a child. A husband cross-appeals, based on the court's refusal to modify the child support provision of the decree. **AFFIRMED.**

Allison M. Heffern and Elizabeth V. Croco of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellant.

Henry E. Nathanson of Johnston & Nathanson, P.L.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

ROBINSON, S.J.

I. Background Facts & Proceedings

Jon Swails and Ronda deNeui were previously married. They have two children, Nicole, born on September 14, 1986, and Heather, born on January 29, 1990. A dissolution decree was entered on September 2, 1992. Pursuant to the parties' stipulation, the court awarded the parties joint legal custody, with Ronda having physical care. Jon was ordered to pay child support of $500 biweekly "until the child graduates from high school, reaches the age of nineteen years, marries, dies or becomes self-supporting, whichever event occurs first." Jon was ordered to pay all of the medical expenses of the children. He was permitted to claim both of the children as dependents for tax purposes.

Nicole began living with Jon in November 2001. The dissolution decree was modified on November 19, 2002.[1] The modification incorporated the parties' stipulation, which provided Jon would have physical care of Nicole. Jon agreed to pay child support of $848 per month for Heather, which was in excess of the amount set by the child support guidelines. Ronda did not pay child support for Nicole. Ronda received social security disability (SSD) benefits, and Nicole received $174 per month as her dependent. The benefits for Nicole were paid to Jon for her support. The parties agreed that if Nicole moved back to Ronda's residence for ninety consecutive days, then physical care of Nicole would revert to Ronda, and Jon's child support obligation would increase to $1000 per month.

[1] Jon continued to pay child support as set under the decree until the modification order was entered, even though Nicole was in his care.

The parties agreed the ability to claim the children as dependents for taxes would alternate under a set schedule.

On August 24, 2003, Nicole moved in with Ronda. She lived there until October 30, 2003, a period of less than ninety days. Nicole moved back with Jon until January 9, 2004. Then Nicole moved in with her maternal grandparents, and her SSD benefits were paid to them. Nicole became pregnant in March 2004. She graduated from high school two months later. In July, Nicole moved to an apartment with her fiancé. Nicole turned eighteen on September 14, 2004.

In May 2004, Ronda filed an application for modification of the decree, asking the court to order Jon to reimburse her $18,054.50 for expenses she paid on behalf of Nicole from August to October 2003, and from January to September 2004. In a counterclaim, Jon asked for a reduction in his child support obligation for Heather. He also sought the right to claim Heather as a dependent on his taxes and to have Ronda pay the first $250 in annual medical expenses. A combined hearing on these matters was held.

The court found it would be inequitable to require Jon to reimburse Ronda for expenses she voluntarily paid during the time Nicole was with her, "particularly because Jon had no input into what was spent, let alone that he did not have a court-ordered obligation to pay child support to Ronda for Nicole at the time." The court also noted Jon had not been asked by the maternal

grandparents to support Nicole.[2] The court concluded neither parent had an obligation to support Nicole after she graduated from high school.

The court denied Jon's request to modify the decree to reduce his child support obligation. The court found Jon had voluntarily agreed to the 2002 modification of his child support obligation, and he failed to show a substantial change in circumstances since that time. The court found no basis to modify Jon's child support obligation, medical support, or tax dependency exemptions. Ronda appealed and Jon cross-appealed.

II. Standard of Review

Our scope of review in this equitable action is de novo. Iowa R. App. P. 6.4. "In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them." Iowa R. App. P. 6.14(6)(*g*).

III. Reimbursement

Ronda appeals the district court's denial of her application for Jon to reimburse her for expenses she incurred for Nicole between August 2003 and September 2004. She claims she spent $18,564.31 on Nicole during this period of time. Ronda states that because Jon had physical care of Nicole, he had the "responsibility to maintain a home for the minor child and provide for the routine care for the child." *See* Iowa Code § 598.1(7) (2003). She asserts the responsibility to pay Nicole's day-to-day expenses should have fallen on Jon, and because she paid for most of Nicole's expenses, he should reimburse her.

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[2] The issue of whether the maternal grandparents could maintain an action against the parents for amounts spent on Nicole is not before us, and we make no findings on this issue.

Ronda relies upon *Brown v. Brown*, 269 N.W.2d 819, 822 (Iowa 1978), which holds a parent may maintain an action for past child support. The case also provides:

> [N]othing in the mutuality of the statutory obligation forecloses a right of contribution between the parents when one has performed a duty the other should in justice and equity have helped with. Rather, the fact the obligation is joint and several provides a basis for contribution; one obligor should reimburse the other for any sum paid by the other in excess of his or her proportionate share.

Brown, 269 N.W.2d at 822 (citation omitted). We find the facts in *Brown* to be distinguishable. There, a mother had been awarded physical care of her two children in an Illinois dissolution decree, but had not been awarded any child support. *Id.* at 819. She later brought an action in Iowa seeking to have the father reimburse her for a portion of the support of the children. *Id.* at 820. The Iowa Supreme Court determined the father, who had not paid any child support, should contribute for past support of the children. *Id.* at 822.

Unlike *Brown*, in the present case support orders were in place, but Ronda voluntarily contributed more than she was required to under the decree. Our supreme court recently stated, "Courts generally do not allow a credit to the obligor spouse for voluntary expenditures made on behalf of the child in a manner other than that specified by a decree." *In re Marriage of Pals*, 714 N.W.2d 644, 650 (Iowa 2006) (citations omitted). We agree with the district court's finding that the payments made by Ronda for Nicole were completely voluntary.

Whether Nicole was emancipated in May 2004, when she graduated from high school, or July 2004, when she moved in with her fiancé, or September

2004, when she turned eighteen-years old, the payments made by Ronda were voluntary. We conclude Ronda is not entitled to be reimbursed for the amounts she voluntarily spent on Nicole.

III. Child Support

Jon claims the district court should have modified the dissolution decree to reduce his child support obligation for Heather because he is currently paying more than the amount required under the child support guidelines. He also asks to be entitled to claim Heather as a dependent on his taxes. He asserts that since he is employed, and Ronda is a SSD recipient, he will benefit more from the tax exemption. Finally, Jon asks to have Ronda pay the first $250 in medical expenses. Currently, Jon pays all medical expenses.

The district court concluded Jon had failed to show a substantial change in circumstances. A party seeking modification of a dissolution decree must establish there has been a substantial change in circumstances since the entry of the decree or any subsequent modifications. *In re Marriage of Maher*, 596 N.W.2d 564-65 (Iowa 1999).

We agree Jon has failed to show a substantial change in circumstances. Jon voluntarily agreed at the time of the 2002 modification to pay more child support for Heather than that required by the child support guidelines. He also agreed to the modification of the tax exemptions. Jon's argument regarding medical expenses is based on an amendment to Iowa Court Rule 9.12. This

rule, however, was amended prior to the modification in 2002.[3] Jon has not alleged a change in circumstances since the time of the modification. We conclude the district court properly denied his request to modify the dissolution decree.

IV. Attorney Fees

Ronda seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We determine each party should pay his or her own appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed one-half to each party.

AFFIRMED.

[3] Iowa Court Rule 9.12, regarding medical support orders, was amended on November 9, 2001, and made effective February 15, 2002. The modification order in this case was filed on November 18, 2002.