IN THE COURT OF APPEALS OF IOWA

No. 7-662 / 07-0326
Filed November 29, 2007

IN RE THE MARRIAGE OF MARY K. STEINLAGE AND GARY A. STEINLAGE

Upon the Petition of
MARY K. STEINLAGE,
Petitioner-Appellee,

And Concerning
GARY A. STEINLAGE,
Respondent-Appellant.

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

Gary Steinlage appeals from the district court's modification of child support. **AFFIRMED AS MODIFIED.**

John Hofmeyer III of Hofmeyer & Hanson, Fayette, for appellant.

Dennis Larson of Larson Law Office, Decorah, for appellee.

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

VAITHESWARAN, J.

This appeal raises child support issues generated by a child's move to the noncustodial parent's home.

I. Background Facts and Proceedings

Gary and Mary Steinlage divorced in 2003. Pursuant to a stipulated decree, the district court awarded Gary physical care of the two minor children remaining in the home. Mary was ordered to pay child support of $400 a month for the two children and $300 a month for one.

In November 2005, the youngest child, Katie, moved in with Mary.[1] Mary made child support payments to Gary in November and December 2005, and in January 2006, even though Katie was living with her. After that point, Mary stopped paying child support.

Mary applied to modify the dissolution decree to recognize the changed living arrangement. Her application was filed on January 20, 2006 and was served on February 2, 2006.

On the day of trial, Gary agreed to a modification of the decree's provision on physical care. He only disputed the amount of his child support obligation and whether it should be imposed retroactively.

Following trial, the district court terminated Mary's support obligation effective January 1, 2007. The court ordered Gary to pay Mary $366.75 per month retroactively to October 1, 2005. Gary filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) for expanded findings and conclusions. He

[1] The other child had earlier moved in with Mary but, as he turned eighteen after the move, the parties are only contesting child support for one child.

asked the court to amend its ruling to either remove the order for retroactive support or to order that his support obligation begin three months after the modification petition was served on him. The court overruled the motion and Gary appealed.

II. Child Support

Iowa Code section 598.21C(4) (Supp. 2005) provides, in pertinent part:

> Judgments for child support or child support awards entered pursuant to this chapter . . . of the Code which are subject to a modification proceeding may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party . . . .

As a preliminary matter, the parties agree that this provision only authorizes the retroactive modification of a child support order from three months after the service of the petition for modification. Iowa Code § 598.21C(4); *In re Marriage of Caswell*, 480 N.W.2d 38, 40 (Iowa 1992). They also agree that Gary was served with the modification petition on February 2, 2006. Therefore, the earliest Gary's child support order could have been retroactively imposed was May 2, 2006 rather than October 1, 2005 as the district court ordered. This is Gary's fall-back position.

Gary's primary argument is that the district court should not have imposed any retroactive support. He asserts that an order requiring him to pay Mary child support retroactively had the effect of retroactively reducing Mary's support obligation, as Gary's payments would have offset Mary's payments. This, he argues, is impermissible. *See In re Marriage of Barker*, 600 N.W.2d 321, 323 (Iowa 1999) ("[W]e may not retroactively reduce periodic child support obligations that have accrued prior to the time that modification is ordered." (citations

omitted)). He further argues that it is inequitable to require him to pay support when he legally had physical care of Katie and was willing and able to continue as her physical caretaker.

These arguments were preserved for our review and are dispositive. By virtue of the stipulated dissolution decree, Gary was Katie's physical caretaker until a contrary order was entered. That contrary order was entered on January 8, 2007. For the reasons Gary urges, we agree January 2007 was the operative month for the commencement of his child support obligation. We strike the retroactive support obligation imposed on Gary and modify his support obligation to begin in the month of January 2007.

As for Mary's support obligation, the district court correctly ended it in January 2007, the month in which the district court modified the physical care provision of the dissolution decree. Contrary to Mary's assertion, no prior proceedings definitively resolved the physical care issue in her favor. Additionally, the general rule is that, "once child custody has been finally settled in a dissolution decree, the provisions of the decree should continue in force until such time as the decree is modified." *In re Marriage of Grantham*, 698 N.W.2d 140, 145-46 (Iowa 2005) (holding father's absence from parental role as a result of military service necessitated temporary reassignment of custodial responsibilities notwithstanding rule set forth above).[2]

[2] 2007 Iowa Acts (82 G.A.) H.F. 780, § 1 (codified as Iowa Code § 598.21C(3A) (2007)) provides for a temporary order modifying child support while an application for modification of a child support or child custody order is pending. However, this provision went into effect on July 1, 2007 and therefore does not apply in this case.

III. Appellate Attorney Fees

Mary requests $2500 in appellate attorney fees. An award of attorney fees is discretionary. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). As Gary raised cogent arguments on appeal and Mary conceded the district court order required modification at least in part, we decline her request for appellate attorney fees. Costs are taxed to Mary.

AFFIRMED AS MODIFIED.