IN THE COURT OF APPEALS OF IOWA

No. 8-134 / 07-1536
Filed March 14, 2008

PAULA BEDFORD,
Petitioner-Appellee,

vs.

JOHN BEDFORD,
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson, Judge.

John Bedford appeals the district court decision denying his petition to modify the child support provisions of his dissolution decree. **AFFIRMED.**

Lloyd Bergantzel, Council Bluffs, for appellant.

Paula Bedford, Council Bluffs, pro se.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

HUITINK, P.J.

John Bedford appeals the district court decision denying his petition to modify the child support provisions of his dissolution decree. We affirm.

I. Background Facts and Prior Proceedings

John and Paula Bedford dissolved their marriage in 1993. The dissolution decree granted Paula sole custody of their two children: Virginia, born in July 1989, and John W. (hereinafter J.W.), born in August 1991. The decree also ordered John to pay monthly child support "until the minor children reach the age of 18 years or age 22 years if they are full time students." Both children have medical conditions. Virginia has lupus, and J.W. has attention deficit disorder and is diabetic.

Virginia gave birth to a child in December 2006. At the time, Virginia was a seventeen-year-old high school student. Once the baby was born, Virginia went back to school for a few days to finish her coursework for the fall term. After the winter break Virginia tried to resume her schooling; however, she soon withdrew from classes because the stress of school work and raising a child, when combined with her lupus, made her extremely exhausted. Virginia remained in Paula's home and focused on caring for her newborn child. At about the same time, fifteen-year-old J.W. began to skip school. Even when Paula watched him walk into the school, J.W. would still find a way to skip class and hang out with his friends. Because of his extremely poor attendance record, J.W. failed all of his classes during the spring 2007 term.

On April 26, 2007, John filed the present action to modify his child support obligation. John argued he should not be required to pay child support because both children were emancipated and not attending school.

A hearing on this matter was held on August 24, 2007. At the hearing, the court learned that both children still lived with Paula and depended on her for food[1] and shelter. Virginia had re-enrolled in high school and had recently celebrated her eighteenth birthday. J.W. was sixteen-years-old. Over the summer he had switched high schools, and his attendance improved dramatically. He also testified that he was now focusing on his studies.

On August 27, 2007, the court entered an order denying John's petition for modification. The court found John had failed to prove the children were either expressly or implicitly emancipated from their mother's care. The court also ordered John to pay $750 of Paula's attorney fees.

II. Standard of Review

We review modification proceedings de novo. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999). A party seeking modification of a dissolution decree must establish by a preponderance of the evidence that there has been a substantial change in circumstances since the entry of the decree. *Id.* at 564-65.

III. Merits

On appeal, John claims he should not be required to pay support because both children are not full-time students and both have been emancipated. We disagree.

[1] Virginia and her baby received some assistance through state sponsored programs, but Paula provided for the bulk of their care. The purported father of Virginia's child provided no support.

Full-Time Status. We, like the district court, find John has failed to prove that neither child is a full-time student. Virginia is currently enrolled in high school and taking a full schedule of classes. Even though J.W. is enrolled in a program where he is in class for less than a typical school day, he is still enrolled in four classes. John presented no additional evidence to suggest this non-traditional curriculum made J.W. a part-time student. We conclude that John has failed to prove that either child is anything less than a full-time student.[2]

Emancipation. John claims the district court should have ended his child support obligation because Paula has "freed the children from her custody by relinquishing her parental authority" and, regardless of their status at school, emancipated the children.[3]

Emancipation is defined in Iowa as "the freeing of the child from the custody of the parent and from the obligation to render services" to the parent. *Vaupel v. Bellach*, 261 Iowa 376, 379, 154 N.W.2d 149, 150 (1967). Emancipation is not presumed and it may be proven by direct proof or by circumstances. *Id.* at 379-80, 154 N.W.2d at 150-51. Whether a child has been emancipated is determined "largely on the particular facts and circumstances in

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[2] Even if J.W. were only a part-time student, we would still deny John's claim for modification because J.W. is less than eighteen years old. As noted in the decree, John must provide support "until the minor children reach the age of 18 years *or* age 22 years if they are full time students." (Emphasis added.) John's argument that he does not have to provide support for his son so long as his son is not attending school on a full-time basis is erroneous. The phrase "if they are full time students" only modifies the second alternative relating to a child between the ages of eighteen and twenty-two. Because John is less than eighteen years old, the full-time-student requirement is not controlling.

[3] We will assume, arguendo, that John's child support obligation would end if his children were emancipated, even though the dissolution decree does not specify that his support obligations would end if the children were emancipated prior to the time they turned twenty-two years old or finished their schooling.

each case." *Id.* at 380, 154 N.W.2d at 151. A formal act is not necessary for emancipation. *Id.* at 379, 154 N.W.2d at 150.

John argues the children have been emancipated because (1) Virginia has her own child, (2) both children have been employed in the past, (3) both are beyond the age of compulsory attendance at school, and (4) Paula has been unsuccessful at making them attend school—thereby "relinquishing her parental authority."

We find this argument meritless. The record demonstrates that Paula provides both children with food and shelter. They still attend high school and neither is married or has a full-time job. Paula has not performed any formal act to emancipate the children, and we will not infer that she relinquished her custody simply because J.W. went through a period where he skipped school and Virginia took a one-semester break to care for her newborn child. Finally, we do not find that Virginia is, by default, emancipated because she gave birth to a child out of wedlock. *See In re Marriage of Clay*, 670 P.2d 31, 32 (Colo. Ct. App. 1983) (daughter who was dependent upon mother for financial support, had not established own residence, and was not married to or receiving support from father of her child was not emancipated); *Doerrfeld v. Konz*, 524 So. 2d 1115, 1116-17 (Fla. Dist. Ct. App. 1988) (minor child's giving birth and becoming parent was not sufficient to result in emancipation); *French v. French*, 599 S.W.2d 40, 41 (Mo. Ct. App. 1980) (daughter's receipt of payments for aid to families with dependent children following birth of her child did not emancipate her); *Wulff v. Wulff*, 500 N.W.2d 845, 850-51 (Neb. 1993) (holding that child birth, in and of itself, is not sufficient to result in emancipation).

IV. Conclusion

Based on our de novo review of the record, we find that John has failed to demonstrate a substantial change in circumstances warranting modification. Both children attend school as full-time students and neither has been emancipated so as to override the express support provision in the dissolution decree.

AFFIRMED.