

IN THE COURT OF APPEALS OF IOWA

No. 8-617 / 07-2125
Filed September 17, 2008

**IN RE THE MARRIAGE OF LEANNA M. DALY
AND STEPHEN DALY**

**Upon the Petition of
LEANNA M. DALY,**
Petitioner-Appellee,

**And Concerning
STEPHEN J. DALY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Muscatine County, Bobbi Alpers,
Judge.

The respondent appeals the district court's ruling setting the
postsecondary education subsidy obligations of the parties. **AFFIRMED.**

Thomas Reidel, Muscatine, for appellant.

Robert Dekock of Dekock Law Office, P.C., Muscatine, for appellee.

Considered by Vogel, P.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

Stephen Daly appeals, challenging an award of postsecondary education subsidy the district court entered establishing an obligation for him to pay \$2306 a year towards education for his son, Blake Daly. He also appeals that portion of the order which granted his ex-wife, Leanna Daly, a credit of \$1830 for providing Blake's room and board at her home. Both parties request appellate attorney fees. We conclude the district court's ruling setting a subsidy was proper and we affirm.

I. Background Facts and Proceedings.

Stephen and Leanna are the parents of Blake, born in December 1988; Nick, born in July 1993; and Addy, born in December 1996. A dissolution decree was entered for the parties in 2005. In June 2007 Stephen filed an application to modify the parties' dissolution decree to receive primary physical care, or in the alternative, shared physical care, of the parties' two minor children, Nick and Addy. Stephen alleged several reasons to support his contention that there had been a substantial change of circumstances warranting modification, including Leanna's failure to protect the best interests of the children in regards to their school work, and his own extensive involvement in the education of the children. Leanna answered and filed a counterclaim, requesting a postsecondary education subsidy for Blake.

The parties reached an agreement providing that the current custodial arrangement would remain in place. The parties further agreed that Stephen's child support obligations for Nick and Addy would be reduced to \$120 per week.

The parties did not reach an agreement on the issue of Blake's postsecondary education subsidy. The matter proceeded to hearing in October 2007.

On November 21, 2007, the district court entered a modification order. The court found good cause to order a postsecondary education subsidy under Iowa Code section 598.21F (2007), finding Blake had done well in high school academics, he was unable to fully support himself, and the parents had sufficient income to pay a subsidy. Stephen's net monthly income was \$3070, and Leanna's was \$3700. The court noted that beginning in the fall of 2007, Blake was enrolled in his first semester at Muscatine Community College, and determined his costs to attend for the 2007-08 school year would be \$6918. The court further determined Blake could contribute \$2306 to that cost through his employment and student loans he received. Each parent was then ordered to pay half of the remaining cost, \$2306, or one-third of the total cost, and Leanna was to receive a credit of \$1830 against her share for providing Blake's room and board at her home.¹ Stephen now appeals.

II. Scope and Standard of Review.

Our review in this equitable action is de novo. Iowa R. App. P. 6.4. Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

¹ The court further ordered the parties to pay one-third of estimated costs for payments each year Blake continued enrollment in a postsecondary education institution, not to exceed the cost of attending an in-state public institution, so long as Blake continued to meet the obligations under section 598.21F.

III. Merits.

A. Amount of Subsidy.

Stephen argues the district court erred in ordering him to contribute more than was necessary for Blake's postsecondary education subsidy. He claims the court failed to correctly calculate the amount of subsidy required, if any, for Blake's education for the 2007-08 school year. Specifically, Stephen claims the court (1) erred in finding that good cause existed to grant a subsidy; (2) failed to consider the amount Blake may reasonably be expected to contribute to his own education; (3) erred in apportioning the subsidy to Stephen and Leanna without first deducting the amount Blake may reasonably be expected to contribute; and (4) erred in providing Leanna with a credit for Blake's room and board while Blake lives with her.

The first issue we need to address is whether good cause is shown to support a finding that Blake qualifies for a subsidy. The district court found Blake met the age requirement and he had done well in high school academics. The court further found Blake was unable to fully support himself and his parents had sufficient income to pay a subsidy. The court therefore determined Blake qualified for a subsidy. We also find that good cause has been established here.

The next issue we need to address is the amount of subsidy Blake should receive. To do this, we must first determine the cost of attending an in-state public institution, including necessary postsecondary expenses. See Iowa Code § 598.21F(2)(a). The district court determined the cost for Blake's attendance at Muscatine Community College for the 2007-08 school year was \$6918. This is

substantially less than the statutory allowance for costs of an in-state public institution. In figuring this amount, the court added the costs of tuition, books and supplies, room and board, travel allowance, and personal expenses. We agree with the district court on the cost of Blake's postsecondary education expenses.

Next, we must determine the amount Blake can reasonably be expected to contribute to his education. See *id.* at § 598.21F(2)(b). This includes financial aid, scholarships, grants, student loans, and the ability to earn an income while in school. *Id.* Blake did not receive any scholarships or grants, but he did receive loans totaling \$3502 for the 2007-08 school year. Additionally, Blake worked part-time during the school year. The court determined Blake could reasonably be expected to contribute \$2306 to the cost of his education through his employment and the loans he received. In determining what Blake could reasonably contribute, the court was correct in considering his loans and income from his part-time employment. We agree with the district court on this finding.

Finally, we subtract Blake's contribution from the cost of the postsecondary education. See *id.* at § 598.21F(2)(c). The remaining cost is then attributed to the parents. *Id.* The court ordered Stephen and Leanna to each contribute \$2306 for Blake's 2007-08 school year.² Further, the court ordered

² Stephen cites *In re Marriage of Neff*, 675 N.W.2d 573, 579 (Iowa 2004), in support of his contention that Blake should be required to contribute more than \$2306 to his education. He argues Blake's loans and income are more than what is necessary to cover his educational expenses, and those amounts should be considered in determining what Blake can be reasonably expected to contribute.

In *Neff*, the supreme court determined that, considering "the meager financial situations of the parents," it was not unreasonable to expect their children to assume repayment of loans and to work to help finance their educations. 675 N.W.2d at 579-80. The parents each earned slightly more than \$20,000 per year. *Id.* at 578. The supreme court determined the parents could not pay more than a modest share of postsecondary

Leanna to receive a credit against her share of the subsidy in the amount of \$1830 for providing Blake's room and board at her home. We note that the primary issue on appeal is Stephen's strong belief that his son should pay for his own college. We find this issue somewhat counterintuitive considering the fact that, in his application for modification requesting primary physical care for the parties' two minor children, Stephen focused on the children's education as an argument for modifying their placement.

The district court set out its determination of postsecondary education subsidy very thoroughly in its ruling on the parties' application to modify, and we agree with the court's evaluation. We find the court's distribution of subsidy obligations is equitable and within the range of the evidence. We conclude, as the district court did, that \$2306 is a very reasonable amount for these parents to pay for their child's postsecondary education. We therefore find no reason to alter the amount of subsidy and we affirm on this issue.

B. Future Subsidy.

Stephen further contends the court erred in calculating postsecondary expenses for future years without factoring in Blake's expected contributions. Upon our review, however, we find the court did consider Blake's contribution. Specifically, the court found that Blake would be expected to contribute one-third of the expenses, and his parents would split the remaining costs, with one parent

education subsidy, and therefore deducted the amount of the children's loans and income before apportioning subsidy to the parents. *Id.* at 580.

Here, however, Leanna and Stephen both earn more than \$50,000 per year. Stephen pays only \$120 per week in child support for the parties' two minor children. Unlike the parents in *Neff*, Stephen's financial situation can certainly support payment of a \$2306 annual subsidy for his son's postsecondary education.

receiving a credit if that party provides room and board for Blake. We agree with the court's determination with regard to this issue.

C. Attorney Fees.

Both parties request attorney fees on appeal. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* We grant Leanna's request for attorney fees in the amount of \$500. We deny Stephen's request for attorney fees. Costs on appeal are assessed to Stephen.

AFFIRMED.