

**IN THE COURT OF APPEALS OF IOWA**

No. 9-300 / 08-1783

Filed July 2, 2009

**IN RE THE MARRIAGE OF SHERRI JAYNE KNUTSON  
AND KELLY ARTHUR KNUTSON**

**Upon the Petition of  
SHERRI JAYNE KNUTSON,  
n/k/a SHERRI JAYNE BRINEY,  
Petitioner-Appellee,**

**And Concerning  
KELLY ARTHUR KNUTSON,  
Respondent-Appellant.**

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Appeal from the Iowa District Court for Madison County, Darrell J. Goodhue, Judge.

Respondent appeals the district court order setting a postsecondary education subsidy for the parties' minor child. **AFFIRMED.**

Kelly A. Knutson, Truro, appellant pro se.

G. Stephen Walters of Jordan, Oliver & Walters, P.C., Winterset, for appellee.

Considered by Sackett, C.J., and Miller, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**ROBINSON, S.J.****I. Background Facts & Proceedings**

Kelly Knutson and Sherri Briney were divorced on April 22, 2002. On May 19, 2008, Kelly filed an application seeking to modify the parties' dissolution decree to provide for a postsecondary education subsidy for one of the parties' children, Amanda.

A hearing on the matter was held on August 26, 2008. Amanda had been accepted at Coe College, and the estimated annual expense for the 2008-09 school year was \$35,310. Amanda was expected to receive scholarships and grants of \$25,100, leaving remaining costs of \$10,410. The parties both indicated they were willing to contribute one-half of this amount, or \$5205, for Amanda's college expenses.

The district court ordered each parent to pay \$5205 per year as a postsecondary education subsidy, for four consecutive academic years. The court ordered Kelly to pay this amount in \$433.75 monthly installments through the Madison County Clerk of Court. Sherri was ordered to provide health insurance for Amanda, and medical expenses not covered by the insurance were to be divided equally between the parties.

Kelly filed a post-trial motion pursuant to Iowa Rule of Civil Procedure 1.904(2). The court further explained its reasoning, but did not modify its ruling. Kelly appeals the decision of the district court.

## II. Standard of Review

This modification action was tried in equity, and our review is de novo. Iowa R. App. P. 6.4. In modification actions, the district court has reasonable discretion in determining whether to modify a dissolution decree, and that discretion will not be disturbed on appeal unless there is a failure to do equity. *In re Marriage of Vetternack*, 334 N.W.2d 761, 762 (Iowa 1983); *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa Ct. App. 1987).

## III. Merits

A. Kelly contends the district court should have included transportation costs and personal expenditures in calculating Amanda's college expenses. Generally, a postsecondary education subsidy is calculated by determining the cost of attending an in-state public institution, including reasonable expenses,<sup>1</sup> subtracting the amount the child may reasonably be expected to contribute, and the remaining cost is apportioned to the parents. See Iowa Code § 598.21F(2) (2007); *In re Marriage of Neff*, 675 N.W.2d 573, 579 (Iowa 2004).

This formula was not used in the present case, however, because the parents agreed to pay more than the formula would have provided.<sup>2</sup> Parents may agree to pay more than that required by section 598.21F(2) for the postsecondary education expenses of their children. *In re Marriage of Rosenfeld*, 668 N.W.2d 840, 848 (Iowa 2003). The issue of whether transportation and personal expenses should have been included in determining

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<sup>1</sup> Reasonable costs for necessary postsecondary education expenses include more than tuition, books, and room and board. *In re Marriage of Vannausdle*, 668 N.W.2d 885, 889 (Iowa 2003).

<sup>2</sup> Amanda's expected financial resources exceeded the cost of attending an in-state public institution.

the cost of Amanda's postsecondary education is irrelevant because the formula found in section 598.21F(2) was not used in this case to determine the amount of the subsidy.

**B.** Section 598.21F(2)(c) provides, "The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education." Kelly states that if Amanda had decided to attend Iowa State University, her total costs would be \$17,700, and one-third of this amount is \$5900. He asserts that each parent should be required to pay \$5900 per year for Amanda's college expenses. Section 598.21F(2)(c) sets forth a maximum amount each parent could be required to pay. The district court may order each parent to pay less than this amount. See *Neff*, 675 N.W.2d at 579.

**C.** Section 598.21F(5) provides:

Unless otherwise specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

Kelly demurs to the modification order because it does not follow this language, but instead provides that Amanda must maintain "a cumulative grade point average that is at least in the median range for each semester." Kelly proposed a Stipulated Order for Postsecondary Education Subsidy that contained the language he now objects to. We conclude the district court properly included this language in the modification order.

**D.** Kelly also objects to the district court's order that he make his payments through the clerk of court. He points out that under section

598.21F(3), “A postsecondary education subsidy shall be payable to the child, to the educational institution, or to both, but shall not be payable to the custodial parent.”

There was testimony at the modification hearing that Kelly had made payments for vehicles owned by Amanda, and wanted these credited as payments for postsecondary education. The district court reasonably determined that to avoid disputes as to what had been paid and what had not been paid, and whether these payments should be credited to Kelly as payments for Amanda’s college expenses, Kelly would be required to make payments to the clerk of court, and the clerk would then pay the money to Amanda. Under the specific facts of this case, we determine the district court properly required Kelly to make payments through the clerk of court.

#### **IV. Attorney Fees**

Sherri 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 Romanelli*, 570 N.W.2d 761, 767 (Iowa 1997). On a request for appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court’s decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine Kelly should pay \$1500 toward Sherri’s appellate attorney fees.

After considering all arguments made in Kelly's pro se appeal, we affirm the decision of the district court. Costs of this appeal are assessed to Kelly.

**AFFIRMED.**

Miller, J. concurs; Sackett, C.J. concurs in part and dissents in part.

**SACKETT, C.J.** (concur in part and dissents in part)

I concur in all respects except I would modify to provide the payment be made to the child or the school in accordance with the statute.