

IN THE COURT OF APPEALS OF IOWA

No. 9-861 / 09-0498
Filed January 22, 2010

**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.

Appeal from the Iowa District Court for Madison County, David L.
Christensen, Judge.

Kelly Arthur Knutson appeals from the district court order modifying the
postsecondary education provisions of the decree dissolving his marriage to
Sherri Jayne Briney. **AFFIRMED.**

Louise A. Foutch, Johnston, for appellant.

Kelly Knutson, Truro, pro se appellant.

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

Considered by Eisenhauer, P.J., Potterfield, J., and Zimmer, S.J.*

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

ZIMMER, S.J.

Kelly Arthur Knutson appeals from the district court order modifying the decree dissolving his marriage to Sherri Jayne Briney. He contends the district court erred in calculating the amount of the parties' postsecondary education subsidy for their daughter Alissa. He also contends the court erred in ordering him to make payments for the subsidy through the clerk of court and in awarding Sherri trial attorney fees. We affirm the district court.

I. Background Facts and Proceedings. The parties' marriage was dissolved by a dissolution decree entered in 2002. Kelly and Sherri have three children. Alissa is their oldest child. In the original decree, the district court reserved jurisdiction to require the parties to contribute to their children's postsecondary education expenses. Alissa graduated from high school in 2006. She then attended Southwestern Community College in Creston, Iowa during the 2006-2007 academic year.

On October 9, 2006, the district court entered a stipulated order setting the amount each party would contribute to Alissa's education at Southwestern for the 2006-2007 and 2007-2008 academic years. The order provided that each of the parties would pay the amount of \$4262.67 per academic year, which is one-third the cost of attending Southwestern for two semesters.¹

¹ The parties' middle daughter, Amanda, also receives a postsecondary education subsidy. Amanda attends Coe College. Following a hearing held in August 2008, the district court ordered each of the parties to pay \$5205 per year as a postsecondary education subsidy for her. The amount of the award was affirmed by this court in an opinion filed July 2, 2009, following an appeal by Kelly.

Alissa transferred to Iowa State University (ISU) in the fall of 2007. In August 2008, Kelly filed an action to modify the court's October 2006 subsidy order. The application was later amended to clarify the relief requested. During the fall semester of 2008, Alissa attended a university in Italy as part of a study abroad program. In January 2009, the district court held a hearing to establish a postsecondary education subsidy for Alissa at ISU. At the hearing, the parties agreed that good cause existed for modifying the prior subsidy order for Alissa, but disagreed regarding the amount of the subsidy. There is no dispute that Alissa is child who qualifies for a subsidy as provided in Iowa Code Section 598.21F (2007).

On February 2, 2009, the district court issued a ruling establishing a subsidy for the 2007-2008, 2008-2009, and 2009-2010 academic years. The court rejected Kelly's argument that the higher cost of attending the study abroad program in Italy should be imposed on the parents as part of a subsidy order.² The district court ordered each party to pay the sum of \$4876 for the 2007-2008 academic year, the 2008-2009 academic year, and thereafter, so long as Alissa qualified for a subsidy under the controlling statute, or until the subsidy was changed by further court order. Kelly subsequently filed an application to enlarge and amend which the district court denied. Kelly has appealed from these orders.

² At trial, Kelly testified that a reasonable cost for Alissa for the 2008 fall semester would be \$18,261, and that a reasonable cost for the spring semester would be \$9782 for a total cost of \$28,043. He opined that a reasonable subsidy for each parent for the 2008-2009 academic year would therefore be one-third of \$28,043 or \$9348.

II. Scope and Standard of Review. Our review of the modification action is de novo. *In re Marriage of Vannausdle*, 668 N.W.2d 885, 887 (Iowa 2003). 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. Analysis. In calculating the amount of a postsecondary education subsidy, we first determine “the cost of postsecondary education based upon the cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree.” Iowa Code § 598.21F(2)(a). The amount the child can reasonably be expected to contribute to her expenses is then calculated and subtracted from the cost figure. *Id.* § 598.21F(2)(b), (c). The amount that remains is then apportioned between the parents, with a ceiling for each parent equal to one-third the cost of attending an in-state public institution. *Id.* § 598.21F(2)(c).

At the time of trial, Alissa was attending ISU, an in-state public institution with an annual cost of attendance of \$17,700 for the 2008-2009 academic year. The crux of Kelly’s first argument on appeal is that the district court erred in failing to include the increased expense necessary for Alissa to travel to and attend the study abroad program at the Lorenzo de’ Medici University in Florence, Italy during the fall semester of 2008 in her 2008-2009 postsecondary education subsidy. Participating in this study-abroad program was likely a valuable experience for Alissa and she received fifteen credits toward her

degree. However, her study abroad resulted in her paying significantly higher costs for her fall semester of study than she would have incurred if she had remained at ISU. As we have mentioned, it cost Alissa a little more than \$18,000 to attend the fall semester in Italy. This is roughly twice the cost of attending ISU for a semester.

Alissa is studying for a bachelor's degree in Apparel Merchandising, Design, and Production at ISU. The evidence shows approximately seventy-five to eighty percent of the students enrolled in Alissa's degree program at ISU do not complete a study abroad program, and it is not necessary for Alissa to complete such a program to obtain a bachelor's degree in her major.³ Because the added expense of studying in Italy was not a "reasonable" cost for a "necessary" postsecondary education expense, we conclude the district court properly refused to consider such expense to the extent that it exceeded the ordinary cost of attending ISU in Ames.

Kelly next contends the district court erred in including certain loans and grants as part of Alissa's financial resources for the 2008-2009 academic year because those loans and grants were only available to Alissa because she attended the Lorenzo program. We determine the trial court properly determined the amount Alissa may reasonably be expected to contribute to her expenses. See Iowa Code § 598.21F(2)(b).

³ The record indicates that Alissa is required to participate in an internship program in order to graduate in her major. However, this requirement may be satisfied in a variety of ways that do not include study abroad.

The evidence shows Alissa's expected financial resources for the 2008-2009 academic year—including grants, wages, and loans—equal \$11,431. Kelly claims the difference in financial aid Alissa received in the 2007-2008 academic year (\$4500) and the 2008-2009 academic year (\$10,181) “can only be attributed to her increased financial need based on her attendance at ISU's Lorenzo program in the fall of 2008.” However, Alissa testified she was not eligible for grants in the 2007-2008 year because her FAFSA was not completed by the March 1 deadline. In addition, Alissa's father asked her the following question concerning this issue at trial.⁴

Q. So this year you got the grant. Is it possible that—This year you're getting quite a bit more money. Is it possible that some of this money is credited to you because you went to Italy and it may not be available to you for your last year; is that correct? A. I'm not sure. I don't understand. It could be.

We conclude it was proper for the district court to consider the full amount of financial aid Alissa was eligible to receive for the 2008-2009 academic year in calculating the subsidy.

The trial court deducted Alissa's expected financial contribution of \$11,431 from the sum of \$17,700, which is the published cost of attending Iowa State University for the 2008-2009 academic year to arrive at an expected parental contribution of \$6269. See Iowa Code § 598.21F(2)(c). The court then apportioned that amount equally between the parties in determining that each would owe a subsidy of \$3134 under the statute. However, Sherri agreed to pay a subsidy of \$4876 for the 2008-2009 year and had already paid that amount. In

⁴ Kelly represented himself at trial.

addition, Kelly had already advanced more than \$9348 for that academic year. As a result, the district court concluded that a postsecondary education subsidy of \$4876 for each parent for the 2008-2009 academic year was appropriate. The court further found that each parent had already paid their subsidy for that year in full. We conclude the district court's decision is equitable and we affirm it.

Kelly also contends the district court erred when it established Alissa's subsidy for the 2007-2008 academic year. He contends the postsecondary subsidy for 2007-2008 should be fixed at least \$5723.33 or perhaps more depending on how the cost of postsecondary education is calculated. Kelly argues Alissa's actual cost of attendance was higher than the \$17,170 cost figure provided by Iowa State University for the 2007-2008 year. He also argues Alissa's wages should not be included in determining Alissa's contribution, arguing her wages were offset by transportation expenses.

In deciding to set the subsidy for 2007-2008 in the amount of \$4876 for both parties, the district court noted that the cost of attending ISU for that academic year (\$17,170) was less than for 2008-2009 (\$17,700) based on published figures provided by ISU. The court also noted that Sherri had already advanced the sum of \$4677 toward Alissa's education expenses for the 2007-2008 academic year.⁵ Therefore, the amount Sherri has already paid is just \$199 less than the subsidy fixed by the court for the academic years in question. Finally, the court pointed out that the amount she has paid is more than the computed subsidy of \$3134 for 2008-2009, and it is more than the amount of the

⁵ There appears to be no dispute that Kelly has already contributed the sum of \$8,229 for the 2007-2008 academic year

subsidy set in 2006 in the original Stipulated Orders for Postsecondary Education.

Kelly complains that the district court did not make a specific determination regarding which of the amounts Alissa spent during the 2007-2008 academic year were reasonable costs for only necessary postsecondary education expenses; and, in addition, failed to make a determination regarding Alissa's expected contribution to be deducted from the cost of postsecondary education. While this is true, our own review of the record convinces us that the trial court's decision to award a postsecondary education subsidy of \$4876 for the 2007-2008 academic year was equitable under the circumstances and we affirm it. We also believe the trial court's conclusion that Sherri and Kelly have satisfied their obligations for the 2007-2008 academic year was reasonable.⁶

Kelly next contends the district court erred in ordering him to make payments to the clerk of court, noting section 598.21F(3) states the subsidy "shall be payable to the child" or "to the educational institution." The court's order requires Kelly to send checks, made out to Alissa, to the clerk of court's office. The clerk's office is then required to record the date of receipt and the amount of the check, and then forward each payment to Alissa. This is the second appeal Kelly has taken regarding an issue pertaining to postsecondary education expense. *In re Marriage of Knutson*, No. 08-1783 (Iowa Ct. App. July 2, 2009). In the appeal regarding Amanda, another judge imposed a similar requirement

⁶ In reaching this conclusion we note that Amanda and Alissa have spent a significant amount of time living in their mother's home during the summer. Sherri contributed money to Alissa for supplies she needed in Italy and Sherri has continually supplied the girls with health insurance.

regarding Kelly's payments. It is apparent that the parties have had more than a few disagreements regarding the handling of expenses incurred by or on behalf of their daughters. A review of the record convinces us that the trial court was simply trying to make sure there was a good record of payments in order to avoid unnecessary litigation between the parties in the future. In the vast majority of cases, we believe the method of payment established in this case will not be necessary. However, under the specific facts of this case, we conclude the court's requirement was reasonable and not in violation of the controlling statute.

Finally, Kelly contends the court erred in awarding Sherri \$3564 in trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Chmelicek*, 480 N.W.2d 571, 576 (Iowa Ct. App. 1991). In order to overturn the award of trial attorney fees, Kelly must show the trial court abused its discretion. *See id.* An award must be fair and reasonable and based on the parties' respective ability to pay. *Id.* In making its award, the district court noted Kelly represented himself and engaged in litigation practices "which were, at the very least, unnecessary and created an undue financial burden and expense to Sherri." After considering the parties' financial resources and the fact Kelly caused Sherri to incur unnecessary attorney fees while incurring none himself, we cannot say the district court abused its discretion. *See In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006).

Sherri requests an award of her appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997).

We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. See *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Sherri was forced to defend the trial court's decision and was successful in her defense. We award Sherri \$1500 in appellate attorney fees.

Having resolved the issues presented by this appeal, we believe a few brief comments are in order. We view the appellate record in this case with some dismay. The record reveals that an inordinate amount of time, energy, and money was spent in this case to establish a postsecondary education subsidy for Alissa. The same can be said about a recent appeal regarding the parties' middle daughter, Amanda. We hope the parties can avoid burdensome and expensive litigation if their youngest child decides to go to college.

AFFIRMED.