IN THE COURT OF APPEALS OF IOWA

No. 4-345 / 03-1562
Filed September 9, 2004

IN RE THE MARRIAGE OF LINDA S. COYER and LARRY T. COYER

Upon the Petition of
LINDA S. COYER,
Petitioner-Appellee,

And Concerning
LARRY T. COYER,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, William L. Thomas, Judge.

Larry Coyer appeals from the district court's decision modifying the alimony provision of a dissolution of marriage decree and entering certain judgments against him. **AFFIRMED IN PART, AFFIRMED AS MODIFIED IN PART, AND REVERSED IN PART.**

John Beasley of Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P., Iowa City, and Steven Lytle of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellant.

Margaret Lainson of Meardon, Sueppel & Downer, P.L.C., Iowa City, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Larry Coyer appeals from the district court's grant of Linda Coyer's petition to modify the alimony provisions of the parties' dissolution decree and the court's entry of various judgments against him and in favor of Linda. Linda seeks appellate attorney fees. We affirm in part, affirm as modified in part, and reverse in part.

I. BACKGROUND FACTS AND PROCEEDINGS.

Larry and Linda were married in 1976 and divorced by decree of dissolution in January of 1997. They had one child, Justin, born September 20, 1980. The dissolution decree approved and incorporated the parties' stipulation of agreement. The decree provided that Larry would pay spousal support of $700 per month until Linda's death or remarriage. It also required Larry to maintain the car payments on an automobile Linda owned, until the payments were completed or his spousal support obligation earlier ended, and to maintain automobile insurance and health insurance for Linda as long as he remained obligated to pay spousal support. The parties soon agreed that Larry would pay Linda $120 over and above the alimony payments in satisfaction of those automobile and health insurance requirements. The decree provided that the amount of spousal support would be adjusted annually in the same percentage as increases or decreases in the consumer price index. The parties agreed at the modification hearing that Larry was current with his alimony payments and

that after applying the adjustment for changes in the consumer price index Larry's alimony obligation was $803.03 per month as of the time of trial.[1]

The decree also set Larry's child support for Justin at $846.53 per month, to be paid until September 1, 1999, approximately three months after Justin's graduation from high school. In addition to the child support, Larry was to provide health insurance for Justin, one-half of his uninsured medical and dental expenses, and his automobile insurance. Post high school education expenses incurred for Justin were to be shared by Linda and Larry.

Linda filed a "Petition for Modification and Enforcement of Previous Decree" on July 31, 2002 seeking an increase in alimony and seeking judgments against Larry for various amounts she claimed she had paid for Justin's expenses which were in fact Larry's obligations under the decree. Trial was held on Linda's petition on July 17, 2003.

At the time of the dissolution in 1997 Linda was living in Iowa City working as a licensed practical nurse (LPN) earning $6,300 per year. At the time of the modification hearing she was still working as an LPN in Iowa City, but was temporarily limited to working in medical records due to a recent back injury, and earned $36,477 in 2002. Larry was an assistant football coach at Iowa State University at the time of the dissolution and was earning $84,000 per year. Following the dissolution Larry remarried his first wife, Janice. In 2000 Larry accepted a position as linebacker coach for the professional football team the Denver Broncos with a starting salary of $175,000. In March 2003 Larry was

[1] Initially Linda also sought reimbursement for back alimony due to the fact the cost of living increase mechanism had never been implemented since the decree. Prior to the modification trial Larry agreed to pay the cost of living arrearage and a partial satisfaction of judgment, confined to this issue, was entered on June 23, 2003.

promoted to defensive coordinator for the Broncos. He signed a two-year contract and received a raise in pay to $275,000 for the first year, and was to receive a $25,000 raise in the second year of the contract.

The district court entered a written decree of modification on September 2, 2003 granting Linda's petition. The court found that Larry's income had "increased dramatically, far more than the court or the parties would have anticipated," and that the increase constituted a substantial change in circumstances. It increased Larry's monthly alimony obligation from $803.03 (taking into account the cost of living increases) to $2,000 per month beginning with the payment due March 1, 2003. The court further found Larry's argument that he did not pay the claimed expenses for Justin because the relevant provisions in the decree were ambiguous to be without merit. Accordingly, the court imposed judgments against Larry and in favor of Linda for the following items and amounts:

(1) Justin's uninsured medical and dental bills - $4,439;
(2) Justin's health insurance - $2,773;
(3) Justin's post high school education - $2,339;
(4) Justin's car insurance - $2,640.

The court further ordered Larry to pay $3,000 of Linda's trial attorney fees.

Larry appeals from the court's modification order contending the court erred in increasing his alimony obligation, in entering the judgments against him for Justin's expenses, and awarding Linda trial attorney fees.

II. SCOPE AND STANDARD OF REVIEW.

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). No hard

and fast rules govern the economic provisions of a dissolution decree, each decision turns on its own uniquely relevant facts. *Id.* Thus, we accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling only when there had been a failure to do equity. *Id.*

III. MERITS.

A. Modification of Alimony.

Iowa Code section 589.21(8) (Supp. 2001) allows modification of an alimony award "When there is a substantial change in circumstances." This provision further provides that "[i]n determining whether there is a substantial change circumstances, the court shall consider" a number of specifically listed factors. The principal factor relevant here is "[c]hanges in the employment, earning capacity, income or resources of a party." Iowa Code § 598.21(8)(a). Other inter-related factors which have some bearing on the issue, but are of somewhat lesser significance, are "[r]emarriage of a party," "[c]hanges in the number or needs of dependents of a party," and [c]hanges in the medical expenses of a party." Iowa Code § 598.21(8)(c), (d), and (g).

> 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 of the parties since the entry of the decree or of any subsequent intervening proceeding that considered the situation of the parties upon application for the same relief. Other well-established principles govern modification: (1) not every change in circumstances is sufficient; (2) it must appear that the continued enforcement of the decree would, as a result of the changed circumstances, result in positive wrong or injustice; (3) the changes in circumstances must be permanent or continuous rather than temporary; and (4) the change in circumstances must not have been within the contemplation of the court when the original decree was entered.

In re Marriage of Maher, 596 N.W.2d 561, 564-65 (Iowa 1999) (citations omitted).

The district court found that Larry's income had increased dramatically, far more than the court or parties would have anticipated, and for that reason alone increased Linda's alimony award. Larry's salary had increased somewhat more than three-fold from the 1997 dissolution to the 2003 modification hearing. However, Linda's salary had increased almost six-fold during that time. In addition, the alimony she received had increased fifteen percent during that time pursuant to the decree provision that adjusted alimony annually to meet changes in the consumer price index. Her combined salary and alimony had increased from $14,700 per year to $46,113 per year, more than a three-fold increase in just over six years. She is clearly able to maintain a substantially better lifestyle than she was able to maintain when the dissolution was granted. We conclude that under the facts of this case Larry's increase in income is not a sufficient reason for increasing his alimony obligation.

We also note and give some consideration to Larry's post-dissolution increased financial obligations. He remarried shortly after the parties' marriage was dissolved. His spouse is fifty-nine years of age, has chronic degeneration of vertebrae in three different areas that is essentially untreatable except for pain management therapy which she undergoes, is unable to work, and may soon be unable to walk. Although Larry's spouse apparently has medical insurance, Larry is responsible for up to $1,000 per month in expenses for treatments and medications in excess of what the insurance pays. Larry's remarriage and substantial increase in medical expenses must be given some consideration and are factors that go against increasing his alimony obligation.

Finally, we conclude Linda has not shown that the increase in Larry's income is or is likely to be more or less permanent or continuous. Larry's entire employment history is as a football coach. The evidence indicates that the average longevity of collegiate and professional coaching jobs is three years. On at least three occasions Larry has lost coaching jobs when a team's head coach has been fired. He has had several other changes in coaching jobs. Larry's present contract, under which he is paid substantially more than in previous coaching jobs, is for only two years. The evidence shows that because of the physical demands of the job most professional football coaches retire at age sixty-two or sixty-three. Larry had passed his sixtieth birthday at the time of the modification hearing.

In summary, Linda has not proved by a preponderance of the evidence the existence of such a substantial change in circumstances of a more or less permanent or continuous rather than temporary nature as would warrant an increase in alimony. We therefore reverse the portion of the trial court's judgment and decree that increases Larry's alimony obligation.

B. Judgments.

Larry argues the trial court erred in entering the judgments set forth above against him for Justin's expenses and in ordering him to pay Linda's trial attorney fees. We will address these issues separately and in a slightly different order than argued in Larry's brief. As an initial matter, we note that all of the expenses for which Linda is seeking reimbursement are limited to expenses incurred through 2001, at which point it is undisputed that Justin stopped attending college.

1. Post High School Education.

Larry first claims the district court erred in entering judgment in favor of Linda and against him for Justin's post high school education expenses. The decree provides that "Any expenses incurred for Justin for Post High School Education shall be shared by the parties." The court entered judgment against Larry and in favor of Linda for $2,339 for reimbursement of Justin's post high school education expenses. The amount awarded equaled one-half of the federal student loan Justin obtained for his expenses while attending Kirkwood Community College from 1999 to 2001. The loan had a balance of $4,677.50 at the time of the modification hearing. Larry argues his obligation to contribute to Justin's post high school education expenses is limited by the statute in place at the time the decree was entered, which required the child be a full-time student in good faith, and Justin was not.

Larry is correct that the statutory definition of "support" in effect at the time of the decree, and controlling under the terms of the decree, provides in relevant part that the support obligation "may include support for a child who is between the ages of eighteen and twenty-two years who is . . . in good faith, a full-time student in a college, university, or community college. . . ." Iowa Code § 598.1(6) (1997). However, the decree provision quoted above relating to post secondary education support does not limit Larry's support obligation to the definition of support set forth in the statute in effect at the time. Nor does the decree require Justin to go to a certain school, to be a full-time student, or even to attend classes in consecutive semesters. It merely provides that the parties are to be

equally responsible for "any expenses" incurred for Justin's post high school education.

Just as with all provisions of a decree, Larry's obligation under the terms of this provision must be limited by a rule of reasonableness to a reasonable period of time and a reasonable amount of expenses. We believe two years and $2,339 is neither an unreasonable amount of time for Larry's obligation to continue nor an unreasonable amount of money for him to pay for Justin's post high school education expenses. Thus, we agree with the trial court that under the terms of the decree Larry's obligation to contribute to Justin's post high school education expenses continued through 2001 when Justin stopped attending college.

However, having found the decree does in fact require Larry to pay one-half of Justin's post high school education expenses, we nevertheless cannot agree with the trial court's conclusion that Linda is entitled to a judgment against Larry for one-half of Justin's student loan. Linda testified that Justin was the sole debtor on the federal student loan and that neither she nor Larry is named on the loan or obligated in any way to pay the loan under the terms of the loan agreement. Other evidence supports her testimony, as the only person named on the billing statement for the student loan is Justin. Justin and Justin alone is the obligor on the federal student loan. Linda has not paid all or any of the $4,677.50 balance. We conclude that Linda is no more entitled to a judgment against Larry for one-half the balance than Larry would be entitled to a judgment against Linda for one-half the balance. We reverse the portion of the trial court's

judgment that awards Linda a judgment against Larry for $2,339 for one-half of Justin's federal student loan.

2. Health Insurance.

Larry claims the district court also erred in entering judgment in favor of Linda and against him for premiums for health insurance for Justin. The health insurance provision of the decree provides that Larry "shall provide health insurance for the minor child, Justin Coyer until he graduates or otherwise completes his education." Linda sought reimbursement from Larry for premiums she paid for health insurance for Justin for the months of September through December of 1999 and for calendar years 2000 and 2001. The court awarded her the amount sought, $2,773.

Larry argues that under the terms of the decree and the statutory definition of "support" he was obligated to provide health insurance for Justin only while Justin was in good faith a full-time student, and Justin was not. He contends that to require him to provide health insurance when Justin was an adult and not a good-faith, full-time student exceeds the court's authority and is inconsistent with the decree as reasonably construed. He also argues the trial court erred in awarding Linda a judgment for amounts she paid for premiums for months during which he in fact provided health insurance for Justin.

We conclude, as the trial court did, that the decree provision does not limit Larry's obligation to maintain health insurance to Justin to times Justin attended school in good faith on a full-time basis. Otherwise stated, the provision in question does not limit Larry's obligation to the times or conditions contained in the statutory definition of "support" that existed at the time of the decree. Further,

we believe the term "education" as used in the decree provision was intended to include post high school education as well as high school. If the parties or the court had intended that Larry's obligation not extend beyond Justin's high school years the decree could have and would have provided that Larry "shall provide health insurance for the minor child, Justin Coyer until he graduates *from high school* or otherwise completes his *high school* education." Accordingly, we agree with the trial court that the decree required Larry to provide Justin with health insurance through the year 2001 and thus Larry owes Linda reimbursement for some of the premiums she paid for Justin's health insurance during this time period.

The record shows, however, that Larry did in fact carry health insurance for Justin for four of the months for which Linda seeks reimbursement, September of 1999 and January through March of 2000. Accordingly, the $2,773 judgment should be reduced by the amounts of premiums Linda paid for those four months, a total of $345.10 ($68.20 for September 1999 and $92.30 for each of the first three months of the year 2000). We therefore modify the judgment against Larry for Justin's health insurance by reducing it from $2,773 to $2,427.90 and affirm it as so modified.

3. Car Insurance.

Larry also claims the trial court erred in entering judgment in favor of Linda and against him for premiums for Justin's car insurance. The relevant decree provision required that Larry "provide automobile insurance for the minor child as long as there remains a support obligation." Linda sought reimbursement from

Larry for premiums she paid for car insurance for Justin for September 1999 through calendar year 2001. The court awarded her $2,640.

A separate provision of the decree is entitled “Child Support.” It provides in part that “[Larry] shall pay child support . . . .” It is thus clear that the parties and trial court knew how to and did establish a “child support” obligation that is different than and separate from other forms of “support obligation” contained in the decree. We therefore interpret the term “support obligation” in this provision to include any form of support Larry was obligated to provide for Justin. We have determined Larry was obligated to contribute to Justin’s post high school education expenses through the year 2001 when Justin stopped attending college, and to pay for Justin’s health insurance for the same period. We therefore conclude that under this decree provision Larry’s obligation to provide car insurance for Justin continued for the same period of time. Accordingly, we affirm the trial court’s entry of judgment against Larry for $2,640 for premiums for Justin’s car insurance.

4. Uninsured medical and dental expenses.

Larry next claims the trial court erred in entering judgment in favor of Linda and against him for one-half of Justin’s uninsured medical and dental expenses. The uninsured medical and dental expenses provision in the decree provides, “The parties agree that they are each responsible for one-half (1/2) of all uninsured medical and dental expenses of the parties’ minor child.” Linda sought reimbursement from Larry for one-half of the payments she made for such expenses for calendar years 1997 through 2001. The court awarded her the amount sought, $4,439.

Larry argues that because Justin ceased being a "minor child" as of September 20, 1998, the decree does not obligate him to pay one-half of Justin's uninsured medical and dental expenses after that date. Several provisions of the decree refer to Justin as the parties' "minor child." At the time of the parties' January 1997 stipulation and decree Justin was a sixteen-year-old sophomore in high school, and thus would be expected to graduate from high school from May or June of 1999, some eight or nine months after he reached the age of majority. The decree's provision regarding "Health Insurance For Minor Child" provides in part that Larry is to "provide health insurance for the minor child, Justin Coyer until he graduates or otherwise completes his education." Because this provision clearly contemplates Larry providing health insurance for Justin well beyond Justin's eighteenth birthday, we interpret the term "minor child" as used in various provisions of the decree, including the provision concerning uninsured medical and dental expenses, to be merely descriptive of Justin's status at the time of the decree rather than being a limitation on Larry's various support obligations.

Larry also argues that his obligation to pay one-half of Justin's uninsured medical and dental expenses ended when Justin finished high school. However, the provision concerning uninsured medical and dental expenses immediately follows the provision concerning health insurance, which we have concluded applied during both the time Justin was in high school and the time he attended college. We conclude the provision concerning Justin's uninsured medical and dental expenses was also not limited to the time Justin was in high school.

Larry further argues that he should receive credit against this obligation for forgiving a $1,000 loan he made to Linda in 2000, and for purchasing motor

vehicles for Justin while Justin was in high school. There is, however, no evidence that at the time the loan was forgiven either of the parties intended it to apply to this obligation, which Larry in fact continues to argue does not exist. We therefore conclude the forgiveness of the loan was a gift rather than a payment on this obligation. Larry does not indicate where the record supports his claim to have purchased motor vehicles for Justin, and does not suggest that either of the parties intended such purchases, if they in fact occurred, to be credited against his obligation to pay part of Justin's uninsured medical and dental expenses. We thus consider this part of his argument waived.

In summary, we agree with the trial court that Larry's obligation to pay one-half of Justin's uninsured medical and dental expenses continued during the time Justin attended college. We affirm the trial court's judgment against Larry for $4,439 for one-half of Justin's uninsured medical and dental expenses.

5. Trial Attorney Fees.

Finally, Larry argues that because the trial court should be reversed and Linda would thus no longer be the prevailing party she is not entitled to attorney fees under Iowa Code section 598.36 (2003) and the court's award of trial attorney fees should be reversed. For the reasons stated above we have affirmed portions of the trial court's judgment, have affirmed as modified other portions, and have reversed other portions. Accordingly, we conclude Linda was the prevailing party on only part of the issues in the underlying action and reduce the trial court's award of trial attorney fees from $3,000 to $1,500.

C. Appellate Attorney Fees.

Linda seeks an award of appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We 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 trial court's decision on appeal. *Id*. Linda was obligated to defend the trial court's decision due to Larry's appeal and has done so successfully on part of the issues. Larry's ability to pay for the expenses related to this obligation exceeds Linda's at this point in time. Larry shall pay $1,000 of Linda's appellate attorney fees.

IV. DISPOSITION AND CONCLUSION.

Based on our de novo review of the record, and for all of the reasons set forth above, we conclude the trial court erred in granting Linda's petition to modify the alimony provisions of the parties' dissolution decree. We find the court did not err in entering judgments against Larry for Justin's uninsured medical and dental expenses and his car insurance. We also agree with the judgment entry against Larry for Justin's health insurance expense for all but the four months in which Larry did in fact have health insurance for Justin. We modify the judgment against Larry for Justin's health insurance from $2,773 to $2,427.90. We further conclude the judgment of $2,339 awarded to Linda for Justin's post high school education must be reversed because Linda is not an obligor on this debt and has paid no part of it. We reduce the trial court's award of trial attorney fees to Linda from $3,000 to $1,500. Linda is awarded $1,000 in

appellate attorney fees. Costs on appeal are taxed one-half to Linda and one-half to Larry.

AFFIRMED IN PART, AFFIRMED AS MODIFIED IN PART, AND REVERSED IN PART.