

IN THE COURT OF APPEALS OF IOWA

No. 6-628 / 05-1953
Filed November 16, 2006

**IN RE THE MARRIAGE OF NANCY SWANSON
AND WILLIAM SWANSON,**

Upon the Petition of

NANCY SWANSON, n/ka NANCY BRODERSEN,
Petitioner-Appellee,

And Concerning

WILLIAM SWANSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, James D. Scott,
Judge.

The respondent appeals from the district court's order modifying the child
support provisions of his dissolution decree. **REVERSED AND REMANDED.**

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant.

Nancy Brodersen, Milford, Nebraska, pro se.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

William Swanson appeals from the district court's order modifying the child support provisions of the decree dissolving his marriage with Nancy Swanson, n/k/a Nancy Brodersen. William argues that the district court erred when it refused to allow into evidence testimony regarding the living arrangement of their son, Nicholas. He also alleges error as to the total amount of child support arrearages owed to him by Nancy. Upon our de novo review of this modification action, *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006), we reverse and remand to the district court.

William and Nancy's marriage was dissolved in 1995, with physical care of their two children, Nicholas and Samantha, granted to William. Nancy was ordered to pay child support of \$421 per month to William. The decree also ordered the parties to each pay one-half of any necessary medical, hospital, and dental expenses incurred on behalf of the children, which were not covered by insurance. In June 1999, physical care of Nicholas was transferred to Nancy, in a modification action which reduced Nancy's child support obligation to fifty-five dollars per month. This was to reflect the offset between William and Nancy's respective child support obligations.¹ In January 2005, Nancy filed a petition for modification seeking a change in physical care of Samantha with an attendant child support adjustment. William's answer resisted the modification with regard to Samantha and remained silent as to any other matters concerning the

¹ Nancy was to pay William \$412 per month in support for Samantha, and William was to pay Nancy \$357 per month for Nicholas's support. When William would be no longer required to pay support for Nicholas, Nancy's obligation would rise to \$412 per month for Samantha.

children. The parties entered into a partial stipulation in April 2005, approved by the court, that physical care of Samantha would change to Nancy but leaving the issue of her support still contested. In May 2005, William also filed a contempt action against Nancy for failing to pay her portion of Samantha's medical expenses not covered by insurance per the original decree.

The child support modification for Samantha and unpaid medical expenses came on for hearing on September 27, 2005. Evidence was presented through Iowa Child Support Recovery Unit (CSRU) records as to the arrearages of child support owed by each party. William's attorney then attempted to insert issues of Nicholas's support, such as his current residence, when he turned eighteen years old, when he last attended high school, and his fathering a child. In short, William asserted that Nancy's support obligations were more substantial than the CSRU records indicated because Nicholas had in effect been emancipated since sometime in 2002. Nancy's trial counsel objected to this line of questioning as irrelevant to the issues raised before the court. The district court sustained Nancy's objection on the grounds that William failed to plead any claims regarding Nicholas or petition for modification of past support owed by him for Nicholas. The court accepted the parties past due obligations as evidenced by the CSRU records.

In the ruling on the modification petition and contempt motion, the district court found Nancy to be \$4824 in arrears of her support obligation and William to be \$6983 in arrears of his support obligation, both figures supplied by the CSRU records. The court also found Nancy in contempt for failing to pay her portion of Samantha's unpaid medical expenses of \$2639. The court ordered Nancy to pay

the net difference of \$470² to William. William was ordered to pay \$696 per month for Samantha's support retroactive to June 1, 2005, and an additional \$200 per month in arrearages for the months of June, July, and August 2005 (\$2088 total) until satisfied. With the exception of William's arrearage and current support order for Samantha, and Nancy's contempt order, each party's support obligations were declared satisfied in full.

William filed a motion to enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2), alleging that Nancy's past due support obligation was incorrect because Nicholas was emancipated as of December 2002, raising Nancy's obligation to \$412 per month from that time until the partial stipulation was entered. William argued Nancy owed \$13,435.53 in back support, and requested the court to amend its ruling, grant a new trial, or reopen the record to permit additional evidence on the issue. The court overruled the motion, reasoning that William failed to plead a claim for modification of his support obligation for Nicholas until attempting to raise it as a new issue at trial, and further that Iowa Code section 598.21(8) (2005) limits retroactive modification of support to three months after notice of a modification action is served.

On appeal, William argues the court erred in refusing to allow evidence as to Nicholas's circumstances and subsequently setting Nancy's support arrearages according to the CSRU records. We review evidentiary rulings of the district court for abuse of discretion. *Gamerdinger v. Schaefer*, 603 N.W.2d 590, 594 (Iowa 1999). In doing so, we cede wide latitude to the district court in ruling

² \$4824 + \$2639 = \$7463 Nancy owed William; subtract from that the \$6983 William owed Nancy, which leaves a net of \$480 for Nancy to pay William, although the district court's calculation, and that uncontested by the parties on appeal, was \$470.

on the admissibility of evidence. *Kalvik ex rel. Kalvik v. Seidl*, 595 N.W.2d 136, 140 (Iowa Ct. App. 1999). We refrain from disturbing the district court's evidentiary rulings unless there is a clear and prejudicial abuse of discretion. *Carter v. Wiese Corp.*, 360 N.W.2d 122, 130-31 (Iowa Ct. App. 1984).

We agree with the district court that William did not plead a claim related to his past support obligation to Nicholas, or the effect that would have on Nancy's support obligation for Samantha. However, the issue of the parties' child support arrearages was contested and ruled upon by the court as a result of the modification action concerning Samantha. William attempted to introduce evidence showing that the parties' support obligations had at times not been as suggested by the CSRU records, and that the arrearages were thus not properly determined by relying solely on those records. The terms of the dissolution decree and previous modification action were self-executing with regard to when a statutory child support obligation was no longer owed under Iowa Code sections 598.1(6), 598.1(9), and 598.21. See *In re Marriage of Bisenius*, 573 N.W.2d 258, 261 (Iowa 1998) (stating "conditions of a support award for children age eighteen or over are self-executing.") As the provision for support is self-executing, William was not obligated to petition for modification to change the level of support owed by the parties once Nicholas attained some event of emancipation as William alleges. Though the district court noted that Iowa Code section 598.21(8) limits retroactive modification of a child support obligation to "three months after the date the notice of the pending petition for modification is served on the opposing party," modification standards do not apply to the self-executing provisions of support. William, therefore, was not seeking retroactive

relief. Evidence relating to facts concerning Nicholas's emancipation or other attaining of majority was relevant to the issues of support arrearages contested in the modification action. We conclude that the district court abused its discretion by barring introduction of this evidence directly affecting the parties' child support arrearages in dispute. We reverse the district court's evidentiary ruling and vacate the modification order. We remand to the district court for retrial of the child support issue consistent with this opinion.

REVERSED AND REMANDED.