IN THE COURT OF APPEALS OF IOWA

No. 2-444 / 11-1861
Filed July 25, 2012

**IN RE THE MARRIAGE OF AMY LYN EGER
AND MICHAEL JAMES EGER**

**Upon the Petition of
AMY LYN EGER
n/k/a AMY LYN LUNDBERG,**
Petitioner-Appellant,

**And Concerning
MICHAEL JAMES EGER,**
Respondent-Appellee.

Appeal from the Iowa District Court for Hamilton County, Steven J. Oeth, Judge.

Mother appeals the district court's order dismissing her application for a modification of child support. **AFFIRMED.**

Daniel J. Tungesvik and Judd N. Kruse of Kruse & Dankin, L.L.P., Boone, for appellant.

Andrea M. Flanagan of Sporer & Flanagan, Des Moines, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ. Danilson, J., takes no part.

EISENHAUER, C.J.

Amy Eger, n/k/a Amy Lundberg, appeals a district court order dismissing her application for a modification of child support. We affirm.

I. Background Facts and Proceedings.

Amy and Michael married in 1997 and are the parents of two sons. The parties separated in 2007 and subsequently stipulated to the terms of their dissolution decree. In June 2008, the district court entered the dissolution decree awarding shared legal custody and joint physical care of their children. The decree states: "15. CHILD SUPPORT. Due to the relatively equal incomes of the parties and the fact they are sharing physical custody; neither party shall be required to pay support to the other . . . ."

Both parties have other children. Amy's sixteen-year-old son lives with her. Michael has two daughters, ages nineteen and twenty. Michael's court-ordered child support payments for his daughters ended in the spring of 2011. Michael has agreed to pay one-third of the post-secondary expenses for his daughters.

Two years after the decree, in September 2010, Amy filed an application to modify child support. Amy sought to increase Michael's child support from $0 to $240.78. At the October 2011 trial, Amy testified to the changes since the decree. First, her wage increases at work are not as large as they were in the past. Also, "[b]asically, the kids, between buying the food and the gas to run them around and the clothing is more expensive, expenses are just a lot more than what they used to be." Amy argues the current arrangement deviates more

than ten percent from the child support guidelines and any assistance Michael now gives to his daughters is not court-ordered.

Michael testified to the expenses he pays for his sons' sports activities and noted the joint physical care, alternating weekly. Michael argued the parties' economic circumstances had not changed since the entry of the decree.

At the time of the original decree, Michael's 2008 wages were $42,400. Michael's 2010 tax return shows wages of $40,040. Amy's 2008 income was $33,579, and Amy's 2010 tax return lists $33,162 in wages.

II. Scope of Review.

As an equitable action, we review modification proceedings de novo. *In re Marriage of Johnson*, 781 N.W.2d 553, 554 (Iowa 2010). We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(g).

III. Merits.

"When the stipulation is merged in the dissolution decree it is interpreted and enforced as a final judgment of the court, not as a separate contract between the parties." *In re Marriage of Lawson*, 409 N.W.2d 181, 182 (Iowa 1987). Therefore, for Amy to successfully modify the child support judgment, she must establish there has been a substantial change in the parties' circumstances since the entry of the court's decree. *See In re Marriage of Chmelicek*, 480 N.W.2d 571, 573 (Iowa Ct. App. 1991). The decree's child support determination is "final

as to circumstances then existing." *Id*. at 574. "The 'then existing' circumstances are those which were known or, through reasonable diligence, should have been known . . . when the original decree was entered." *Id*. "The original decree is entered with a view to reasonable and ordinary changes that may be likely to occur." *Id*.

Additionally, to warrant modification, "it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in a positive wrong or injustice." *Id*. "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa Ct. App. 1987).

Amy did not appeal the original decree; therefore, her current request for modification cannot be supported on the grounds her original, agreed-upon child support is inequitable. *See Chmelicek*, 480 N.W.2d at 574. We enforce stipulated settlements involving child support if they do not adversely affect the children's best interests. *In re Marriage of Zeliadt*, 390 N.W.2d 117, 119 (Iowa 1986). In denying Amy's modification request, the district court ruled:

> It does not appear . . . anything has changed which would justify modifying the decree. The parties have the same jobs. They are making approximately the same income.
>
> The court has considered [Amy's] argument . . . there is a substantial change in circumstances because under the guidelines there is a ten percent variance between what Michael should be paying and what he is paying. The problem . . . is that the variance in income existed at the time of the entry of the consent decree. It [is inequitable] to apply the guidelines at this point when the parties at the time of the entry of the negotiated consent decree agreed to joint custody, split physical care, and no child support. This seems particularly true in light of the fact basically nothing has changed

> regarding the economic circumstances of the parties since the entry of the consent decree.
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> . . . [T]he court has also considered that Michael no longer has a court-ordered support obligation as it relates to [his two daughters]. Although . . . a legal obligation has not been established relative to a post-secondary education subsidy . . . Michael is voluntarily paying what he would likely be required to pay on behalf of [his younger daughter] under [the] Iowa Code . . . . Similarly . . . Michael is assisting [his oldest daughter] . . . . [T]his assistance is similar to his previous [support] obligation and is not a significant difference in circumstances justifying a requirement he should now begin paying child support to Amy.

At hearing, Amy acknowledged Michael was required to pay child support for his daughters at the time she filed for modification. We conclude Amy, now regretting her agreement at the time of the divorce, seeks to use a "mechanical" application of the Iowa Code[1] to get out of her commitment. It is not our role to second-guess the parties' decision in 2008 or second-guess their motives at that time. At the time of their 2008 decree, the parties knew Michael's oldest children would soon become emancipated. Therefore, Amy has failed "to show that the parties' circumstances today are not as they would have been envisioned by the trial court when the dissolution was granted." *See Chmelicek*, 480 N.W.2d at 576.

Further, based on this record, continued enforcement of the decree does not result in "a positive wrong or injustice." *See id*. at 574. Finally, the trial court has exercised reasonable discretion, and its ruling does not constitute "a failure to do equity." *See Kern*, 408 N.W.2d at 389. After our de novo review, we

[1] Iowa Code section 598.21C(2)(a) (2009) provides: "[A] substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount . . . due . . . [under] current child support guidelines."

conclude Amy did not establish a substantial change of circumstances justifying a modification of Michael's child support judgment.

IV. Attorney Fees.

Both parties request appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within our sound discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). "We consider the needs of the party making the request, the ability of the other party to pay," and the relative merits of the appeal. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Michael successfully defended the decision of the district court. Given our disposition of this case, we award Michael appellate attorney fees in the amount of $1000. Costs on appeal are assessed to Amy.

AFFIRMED.