IN THE COURT OF APPEALS OF IOWA

No. 7-538 / 06-0966
Filed September 19, 2007

**IN RE THE MARRIAGE OF KELLEY LYNN KRAVA
AND THOMAS JAMES KRAVA**

**Upon the Petition of
KELLEY LYNN KRAVA,**
Petitioner-Appellee,

**And Concerning
TOMAS JAMES KRAVA,**
Respondent-Appellant.

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

Respondent appeals from district court order modifying a dissolution decree. **REVERSED AND REMANDED WITH DIRECTIONS.**

James R. Cook, of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble & Cook, L.L.P., Des Moines, for appellant.

Kerri Keyte of the Marks Law Firm, P.C., Des Moines, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Thomas James Krava appeals from the district court's findings, conclusions, and order regarding his application to modify a dissolution decree.

I. Background Facts and Prior Proceedings

Thomas and Kelley Lynn Krava were married in 1983. The couple had two children during the marriage: Scott, born in 1985, and Zachary, born in 1988. The marriage was dissolved in 1989 by judicial decree. Pursuant to this decree, Kelley was granted primary physical care of both children, and Thomas was ordered to pay $350 per month for child support.

In November 2001, at the request of the Child Support Recovery Unit (CSRU), the court entered an order increasing the monthly child support to $479 per month. This order also indicated his obligation would reduce to $328 per month when only one child remained eligible for support.

The eldest son, Scott, turned eighteen in April 2003 and graduated from high school one month later. That same month, the CSRU entered an order reducing Thomas's support obligation to $328 per month.

In August 2003 Scott began attending college as a full-time student at Iowa State University. Scott financed part of his college expenses through federal loans, and Kelley financed a significant portion of Scott's expenses through separate loans.

On March 22, 2005, the CSRU issued an order increasing Thomas's child support obligation. He was ordered to pay $479 per month plus an additional $95.80 per month towards the "delinquency" created during the past two years when he had only paid $328 per month, as previously directed by the CSRU.

Thomas immediately filed an application to modify the dissolution decree. This application asked the court to void the March 22, 2005 order because "the order reinstating the child support and creating a deficiency [was] invalid and unlawful." The application went on to ask the court to

> require [Kelley] to provide all necessary information concerning the costs and financial aid for the minor child; and to thereafter make a determination as to the amount to be paid by each parent for the higher education assistance to the minor child; and for such other, further relief as the Court deems equitable in the premises.

The CSRU filed another order on May 12, 2005, reducing Thomas's monthly child support obligation to $328 per month and requiring that he pay an additional $65.60 per month "for delinquent support until the total delinquency [of $3445.77] has been paid."

The CSRU filed another order on June 7, 2005, reaffirming the $328 per month child support obligation, reaffirming a total delinquency of $3378.63, and cancelling the $65.60 payment for delinquent support.

A hearing on Thomas's motion was delayed for many months due to a change in counsel and scheduling conflicts. The case came to trial on February 16, 2006. On this date, the parties agreed to submit the case to the court based only on the court file, a statement of stipulated facts, and oral argument from both parties. By this time, the youngest child, Zachary, was scheduled to graduate from high school in May and planned to attend classes at Des Moines Area Community College as a full-time student later that summer.

The district court entered its "Findings, Conclusions, and Order" on Thomas's application to modify on April 24, 2006. The court found the dissolution decree was "self-executing" and the $429 payment should have been

continued until the decree was modified. Accordingly, the court upheld the delinquency for the child support that had not been paid for Scott between the months of May 2003 and June 2005. The court terminated child support payments for Scott as of June 2005 and determined that all child support payments would end as of June 1, 2006, when Zachary graduated from high school.

The court went on to assign the postsecondary education subsidy between both parties for the years since the application to modify had been filed. The court ordered each party to pay $5293.34 for Scott's postsecondary education expenses for the 2005-06 school year and $5531.67 for the 2006-07 school year. The court also ordered each party to pay $2943.66 for Zachary's postsecondary education expenses for the 2006-07 school year and one-third of the total cost of postsecondary education for each subsequent year so long as Zachary made progress towards a degree.

On appeal, Thomas appears to argue that he should not be responsible for any child support for Scott once Scott graduated from high school. He also claims the court erred when it determined the amount of postsecondary education subsidy for each parent. Specifically, he contends the reasonable costs for necessary postsecondary education expenses do not include medical/dental expenses, personal expenses, and transportation expenses. He also claims Scott's personal contribution to his own postsecondary education expenses includes all the funds available through his financial aid package. This financial aid package included a federal loan in Scott's name and a large separate loan in Kelley's name. By Thomas's calculation, the sum total of these

two loans exceeded Scott's postsecondary expenses, therefore there is nothing left for Thomas to pay.

Kelley has not resisted the relief sought by Thomas either by brief or argument.

II. Standard of Review

"A proceeding to modify or implement a marriage dissolution decree subsequent to its entry is triable in equity and reviewed de novo on appeal." *In re Marriage of Mullen-Funderburk*, 696 N.W.2d 607, 609 (Iowa 2005).

III. Merits

The original dissolution decree set forth that Thomas was to pay Kelley $350 per month for "child support" until such time as the "last minor child of the parties shall have attained the age of eighteen (18) years, marries, becomes emancipated, whichever should have occurred first, or as may be continued by further provision herein." When the decree was issued in 1989, the Iowa Code defined "support" in the following manner:

> "*Support*" or "*support payments*" means an amount which the court may require either of the parties to pay under a temporary order or a final judgment or decree, and may include alimony, child support, maintenance, and any other term used to describe these obligations. The obligations may include support for a child who is between the ages of eighteen and twenty-two years who is regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college . . . and the next regular term has not yet begun; or a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.

Iowa Code § 598.1(2) (1989). This definition permitted the court to impose a continuing child support obligation on Thomas so long as the children pursued postsecondary education as full-time students. *See In re Marriage of Pals*, 714 N.W.2d 644, 647 (Iowa 2006); *In re Marriage of Phares*, 500 N.W.2d 76, 79 (Iowa Ct. App. 1993) ("The trial court can, in its discretion, award support of a child through college under the proper circumstances."). The Krava decree incorporated this definition and included the following optional provision to provide support for the children while they pursued postsecondary education:

> that the obligation to provide child support . . . as outlined above, shall continue beyond the age of eighteen (18) years if any of the children have not completed high school, and shall continue beyond the age of eighteen (18) years if any of the children have not completed high school, and shall continue for the benefit of any child who is between the ages of eighteen (18) and twenty-two (22) and is regularly attending an approved school in furtherance of a course of study leading to a high school diploma . . . or is, in good faith, a full-time student in a college . . . or has been accepted for admission to a college . . . and the next regular term has not yet begun[.]

A later provision also stated that the "Court shall retain jurisdiction over these parties for purposes of ascertaining their respective obligations for support and college expenses when and if their children pursue a further educational program, beyond high school."

The viability of the provision providing child support throughout college changed in 1997 when the Iowa Legislature amended section 598.1 and removed the postsecondary-support clause from the definition of support and enacted a separate statute to provide for a postsecondary education subsidy by both parents. *Pals*, 714 N.W.2d at 647 (citing 1997 Iowa Acts ch. 175, §§ 185, 190). Thereafter, in 2002 the legislature enacted section 598.21(5A)(e) to

specifically authorize courts to retroactively apply the postsecondary-education statute to modify prior decrees that imposed a support obligation for college expenses. *See id.* at 648 (citing 2002 Iowa Acts ch. 1018, § 17).

Pursuant to these amendments, Thomas could have made an application to modify the dissolution decree in May of 2003 when Scott graduated from high school. The court would have then determined whether there was good cause to establish a postsecondary-education subsidy for Scott and, if it had found good cause, would have gone on to determine the amount of that subsidy. *See id.* at 649-50. Regardless of whether there was good cause to establish the subsidy, the court would have terminated the prior support obligation as it related to Scott because he was eighteen and had graduated from high school. *See id.* at 649 ("We recognize that the application of the postsecondary-education subsidy statute necessarily results in a termination of the prior support obligation.").

However, Thomas did not need to file an application to modify the decree when Scott graduated from high school because the CSRU's May 2003 order had already reduced his child support obligation to $328 per month, the amount required to support the one remaining minor child. It would be inequitable to find that Thomas cannot now challenge his child support obligation simply because he did not make a timely challenge in May of 2003. It would also be inequitable to absolve Thomas from any obligation for Scott's first two years of postsecondary education simply because the CSRU improvidently entered the May 2003 order. Consequently, we reverse the district court's order modifying the decree and now consider Thomas's application to modify the dissolution decree as though it had been filed in a timely manner, in May 2003.

Under Iowa Code section 598.21(5A) (2005), we first determine whether there is good cause to establish a postsecondary education subsidy for Scott beginning with his entry into postsecondary education in August of 2003. When making this decision, we consider Scott's age, his ability to pursue postsecondary education, his financial resources, and whether he is self-sustaining. Iowa Code § 598.21(5A)(a). We also consider the financial condition of both parents. *Id.* Regrettably, the stipulated record in this case contains no information about Scott's financial situation in 2003. There is no information about his income, his assets, or his overall ability to be a self-sustaining member of society. We therefore remand to the district court to have a hearing on these factual issues.[1] If the district court finds there is not good cause to establish a college subsidy, the prior decree must nevertheless be modified to eliminate the existing child support obligation under the decree. *Pals*, 714 N.W.2d at 649. However, if the court finds good cause for a subsidy, then the terms of the subsidy modify and replace the existing child-support provision of the decree. *Id.* at 649-50. The court would determine the amount of the subsidy by utilizing the statutory scheme set forth in Iowa Code sections 598.21(5A)(a)(1)-(3).

Under this scheme, the court would first determine the reasonable costs for necessary postsecondary expenses. Iowa Code § 598.21(5A)(a)(1). These costs may exceed tuition, books, supplies, and a room and board plan. *In re Marriage of Vannausdle*, 668 N.W.2d 885, 889 (Iowa 2003). Under some circumstances, these costs include transportation expenses and personal

[1] Similarly, the court shall also determine whether there was good cause to establish a subsidy for Zachary beginning with his entry into postsecondary education in August 2006.

expenses. *See, e.g.*, *In re Marriage of Goodman*, 690 N.W.2d 279, 284 (Iowa 2004) ("[U]nder the facts of this case, the postsecondary education subsidy should include [the child's] monthly cash allowance [for social, cultural, and educational experiences outside the classroom]."); *In re Marriage of Dolter*, 644 N.W.2d 370, 374 (Iowa Ct. App. 2002) ("With regard to transportation and personal expenses we find no evidence in the present case to show these costs are necessary to [the child's] education."). We also find these reasonable costs may include, under some circumstances, medical/dental expenses. In any case, the court would have to articulate why expenses beyond tuition, books, supplies, and room and board are reasonable under the facts of the case.

The court's next step would be to consider the amount the child may be reasonably expected to pay towards postsecondary education. Iowa Code § 598.21(5A)(a)(2). This determination will require the court to consider the child's financial resources, the child's ability to earn income while attending school, and available financial aid, which includes scholarships, grants, and student loans. *Id.* This determination does not include student loans taken out by a parent for the benefit of the child.

The child's expected contribution would then be deducted from the cost of postsecondary education calculated above. *Id.* § 598.21(5A)(a)(3). The court would then allocate this remaining balance between the parents, with the limitation that the amount paid by one individual parent shall not exceed thirty-three-and-one-third percent of the *total* cost of postsecondary education, as calculated above. *Id.*

IV. Conclusion

We reverse the district court's order modifying the original decree. We also reverse the orders entered by the CSRU on May 8, 2003; March 22, 2005; May 12, 2005; and June 7, 2005. On remand, the district court shall conduct a hearing to determine whether there was good cause to impose a postsecondary education subsidy for both children, beginning when Scott first began attending college in August 2003. If the district court finds no good cause to establish a college subsidy, the prior decree must be modified to eliminate Thomas's child support obligation for Scott after May 2003. However, if the court finds good cause for a subsidy, then the court shall determine the terms of the subsidy for Scott's postsecondary education expenses, beginning in August 2003, and Zachary's postsecondary education expenses, beginning in the fall of 2006. These subsidies would necessarily modify and replace the existing child-support provision in the decree. Finally, the court shall also include in its analysis any amount incorrectly collected by the CSRU after May 2003 to cure the alleged deficiency in child support payments. Costs on appeal are taxed one-half to petitioner and one-half to respondent.

REVERSED AND REMANDED WITH DIRECTIONS.

Miller, J., concurs; Vaitheswaran, J., concurs specially.

VAITHESWARAN, J. (concurring specially)

The majority has reached an equitable result in a procedurally and substantively convoluted case. I concur in the result.