IN THE COURT OF APPEALS OF IOWA

No. 9-061 / 08-1297
Filed April 8, 2009

IN RE THE MARRIAGE OF KEVIN NOBIS
AND MARY NOBIS

Upon the Petition of
KEVIN NOBIS,
Petitioner-Appellee,

And Concerning
MARY NOBIS,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

The respondent appeals from the district court's order modifying the child support provision of the parties' dissolution decree. **REVERSED AND REMANDED WITH DIRECTIONS.**

Teresa A. Rastede of Dunakey & Klatt, P.C., Waterloo, for appellant.

Mary Kennedy, Waterloo, for appellee.

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

VOGEL, P.J.

Mary Nobis appeals from the district court's order modifying the parties' dissolution decree.[1] On June 24, 2008, the district court modified the child support provisions of the parties' dissolution decree. The district court found Kevin, who had been paying child support in the amount of $720.07 per month, should pay child support in the amount of $604.07 per month. The district court stated:

> Petitioner shall pay $604.07 per month child support retroactive to February 1, 2008, which was the first payment due ninety days after Respondent was served with Petitioner's petition for modification. The first payment is due on July 1, 2008 . . . Any child support paid by Petitioner from February 1, 2008, in excess of this order shall be credited against payments made from and after July 1, 2008, at the rate of $50 per month.

Mary filed a post-trial motion pursuant to Iowa Rule of Civil Procedure 1.904(2), in which she asserted that a retroactive reduction in child support was contrary to Iowa law.

On July 16, 2008, the district court ruled that Mary was correct that child support cannot be reduced retroactively. However, the court noted that from November 1, 2007 to June 1, 2008, pursuant to the child support guidelines, Kevin was required to pay $604.07, but Mary had collected $720.07 per month. This "resulted in an unjust cost to Petitioner and an unjust benefit to Respondent

[1] Kevin Nobis and Mary Nobis's marriage was dissolved in September 2004. Mary appealed from the dissolution decree, which this court affirmed as modified in *In re Marriage of Nobis*, No. 04-2069 (Iowa Ct. App. Oct. 26, 2005). On November 28, 2005, Kevin filed a petition to modify the dissolution decree. On October 19, 2006, the district court modified the child support and visitation provisions. On October 25, 2007, Kevin filed a petition seeking a second modification of the child support and visitation provisions. Prior to trial, Kevin and Mary agreed to the child custody provisions. The district court's ruling is the subject of the present appeal.

of $928 . . . . [E]quity demands the Petitioner receive credit for the overpayment in some fashion." Therefore, the district court ordered that

> Petitioner shall pay $469.35 per month child support on July 1, 2008, based upon his actual income, and on the first day of each month thereafter through December 1, 2008, $484.39 on January 1, 2009 (which will fully amortize the $928 overpayment), and $604.07 on the first day of each month thereafter, based on his imputed income.

Mary appeals.

We review modification proceedings de novo. Iowa R. App. P. 6.4; *In re Marriage of Barker*, 600 N.W.2d 321, 323 (Iowa 1999). Mary asserts, and Kevin agrees, that the district court simply constructed a creative way to retroactively reduce Kevin's child support payments.[2] In its June 2008 order, the district court specifically stated it was retroactively reducing Kevin's child support. In its July 2008 order, the district court acknowledged that a retroactive reduction was not allowed. *See Barker*, 600 N.W.2d at 323 ("Our cases have consistently held that, although a support order may be retroactively increased, it may not be retroactively decreased."). However, it then took a creative route to circumvent its prior ruling as well as our case law, for which it cited no authority. *Compare id.* at 324 (considering an *accrued* child support obligation in fixing the amount of future support). We conclude that the district court imposed an improper retroactive modification of a child support order; therefore, we reverse and

[2] Mary also argues that in determining Kevin's overpayment of child support was a financial burden that required a future credit be given to Kevin against future child support payments, the district court erred in failing to take into consideration Kevin's fiancée's income. We need not reach this issue as we conclude the future credits were simply a retroactive reduction in child support.

remand for entry of an order for child support in the amount of $604.07 per month beginning July 1, 2008.

Mary also asserts that she should have been awarded trial attorney fees. We review the district court's denial of a request for trial attorney fees for an abuse of discretion. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). The district court stated: "From a review of the court file, it appears that each of the parties has caused the other to incur substantial attorney fees and this behavior should be discouraged." We find no abuse of discretion in the denial of Mary's request for trial attorney fees.

Additionally, each party requests appellate attorney fees. For the same reason cited by the district court, along with the relevant factors we consider in determining whether an award of appellate attorney fees are warranted, we deny both parties' requests for appellate attorney fees. *See In re Marriage of* Gaer, 476 N.W.2d 324, 330 (Iowa 1991) (stating that in determining whether to grant appellate attorney fees, we consider the needs of the requesting party, the opposing party's ability to pay, and whether the requesting party was forced to defend the appeal). Costs are assessed to Kevin.

REVERSED AND REMANDED WITH DIRECTIONS.