IN THE COURT OF APPEALS OF IOWA

No. 9-281 / 08-1403
Filed July 2, 2009

STATE OF IOWA, ex rel.,
JODY M. WILSON f/k/a JODY M. ASPLEAF, on behalf of UNBORN WILSON f/k/a ASPLEAF,
Petitioner-Appellant,

vs.

EDWIN DELMER BECKNER,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell, Judge.

Jody M. Wilson appeals the district court order granting Edwin Beckner's motion to dismiss her petition to determine whether Edwin should be required to provide postsecondary education support for the parties' child. **REVERSED AND REMANDED.**

Robert B. Deck, Sioux City, for appellant.

Craig H. Lane, Sioux City, for appellee.

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

MILLER, J.

Jody Wilson appeals the district court order granting Edwin Beckner's motion to dismiss her petition to determine whether Edwin should be required to provide postsecondary education support for the parties' child. Both parties seek appellate attorney fees. We reverse and remand.

On December 14, 1989, an order was entered in this matter approving and adopting the parties' agreed-to stipulation. The stipulation and order established Edwin as the father of the parties' child, Stacia, and set his child support obligation for her. Edwin and Stacia's mother, Jody, were never married. The stipulation and order further provided: "Either party may petition the trial court to provide for additional support for higher educational costs and expenses pursuant to Iowa Code section 598.1(2) (1989) in the event the child desires to continue schooling and/or training beyond high school." As relevant to the issue before us, Iowa Code section 598.1(2) (1989) permitted an order for support for a child between the ages of eighteen and twenty-two who is, in good faith, "a full-time student in a college, university, or area school; or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun. . . ."

Stacia graduated from high school in May 2008, and was to begin attending college in the fall of 2008. Jody alleges she attempted to contact Edwin on several occasions to discuss the cost of Stacia's college and what his contribution for her college expenses should be but he would not respond to her inquiries.

On March 21, 2008, Jody filed a "Petition to Determine Post-Secondary Support" and on April 9, 2008, Edwin filed a motion to dismiss her petition, arguing that pursuant to Iowa Code section 252K.205 (2007) Iowa did not have jurisdiction of this matter. He further argued that even if the district court did have jurisdiction, he was not required to provide postsecondary support for Stacia because under the holding in *Johnson v. Louis*, 654 N.W.2d 886, 888 (Iowa 2002), the children of unmarried parents are not entitled to postsecondary education support and the parties here were never married.

In a written ruling filed August 26, 2008, the district court concluded that section 252K.205 did not apply and thus the court had jurisdiction over the matter. However, the court granted Edwin's motion to dismiss concluding,

> There is no language in the agreement that this court believes creates a binding agreement to provide support. Instead, the provision in the stipulation agreement seems to suggest that if the Court had decided, in the future, that section 598.1 allowed support for children of unmarried parents, that [Edwin] would be bound. Simply allowing [Jody] the right to ask this court for support pursuant to Iowa Code 598.1(2) does not mean [Edwin] has agreed to bear such costs, but means exactly what it reads. [Edwin] is required to pay any support that Iowa Code 598.1(2) requires. Iowa Code 598.1(2) currently does not provide any support for children of unmarried parents. Therefore, [Jody] cannot recover costs under the parties' agreement to allow child support pursuant to Iowa Code 598.1(2).

Jody appeals, contending the district court erred in concluding that because section 598.1(2) (1989) did not provide for postsecondary education support for children of unmarried parents the court was not required to determine what, if any, postsecondary education support Edwin should provide for Stacia.

Both parties seek appellate attorney fees. We review this equity case de novo. Iowa R. App. P. 6.4.

"At common law a parent's obligation to support his or her child ends when the latter becomes of age, unless the child is physically or mentally unable to care for itself." *Johnson*, 654 N.W.2d at 887. A child "becomes of age" in Iowa at age eighteen. *Id.* at 888. Edwin's child support obligation was adjudicated pursuant to Iowa Code chapter 252A in 1989. Under that chapter at that time a child support obligor was required to pay only for "any child or children under eighteen years of age . . . a fair and reasonable sum according to the parent's means, as may be determined by the court." Iowa Code § 252A.3(2) (1989). Section 598.1(2) then provided that the court could order either of the parties to pay child support for a child between the ages of eighteen and twenty-two years who, in good faith, is "a full-time student in a college, university, or area school; or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun. . . ." The order could be made before the child reached eighteen or was accepted into an accredited school provided that the order was conditioned upon the child meeting the requirements of section 598.1(2). *In re Marriage of Vrban*, 293 N.W.2d 198, 202-03 (Iowa 1980).

In addition, at the time of the stipulation and order our supreme court had determined that, under section 598.1(2) (1977) children of divorced parents were a special class entitled to postsecondary educational support from both parents even though children of married parents were not entitled to the same benefit.

Id. at 202.[1] Thus, it is true that at the time of the parties' stipulation and resulting court order Edwin was under no common law or statutory *obligation* to provide any type of child support for Stacia after she attained age eighteen.

However as part of their stipulation that was incorporated into its order by the court,[2] Jody and Edwin agreed that either may "petition the trial court to provide for additional support for higher education costs and expenses pursuant to Iowa Code section 598.1(2) (1989) in the event the child desires to continue schooling and/or training beyond high school." Parties are free to enter into an agreement regarding the future college expenses of their children, which the courts may then enforce. *In re Marriage of Goodman,* 690 N.W.2d 279, 283 (Iowa 2004); *In re Marriage of Rosenfeld*, 668 N.W.2d 840, 848 (Iowa 2003). Thus, the parties here were free to agree to allow each other to later petition the court to order postsecondary educational support for their child, even though such support otherwise could not be ordered. We believe the most reasonable interpretation of the parties' stipulation is that such an agreement is precisely what the parties intended by their stipulation, and thus also the most reasonable interpretation of the court's intention in accepting and approving the stipulation.

> 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.

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[1] In *Johnson* our supreme court concluded that like the children of married parents, the children of unmarried parents also were not entitled to postsecondary educational support because they too had not had the "attributes of a legally recognized parental relationship taken from them by court decree. The educational benefit is a quid pro quo for the loss of stability resulting from divorce." *Johnson*, 654 N.W.2d at 891.

[2] Although a stipulation of settlement is a contract between the parties, it becomes a final contract when it is accepted and approved by the court. *See In re Marriage of Lawson*, 409 N.W.2d 181, 182 (Iowa 1987).

> A judgment or decree is to be construed like any other written instrument. The determinative factor is the intention of the court as gathered from all parts of the judgment. Effect must be given to that which is clearly implied as well as that which is expressed. In construing a judgment, force and effect should be given every word, if possible, to give the judgment as a whole a consistent, effective and reasonable meaning.

Lawson, 409 N.W.2d at 182-83 (internal citations and quotations omitted).

We believe the parties entered into this agreement in order to allow for the possibility of providing Stacia with postsecondary educational support even though under the law, both then and now, she would otherwise not be entitled to any such support as her parents were never married.

We also believe that the district court's interpretation of the relevant language in the parties' stipulation would mean that they were agreeing to the right to petition for nothing. Our supreme court has stated that "where a contract is susceptible of two constructions, one of which will accomplish the intention of the parties and make the contract an enforceable one, while the other would make it unenforceable and meaningless, the former is to be preferred." *First Nat'l Bank of Creston v. Creston Implement Co.,* 340 N.W.2d 777, 781 (Iowa 1983). "In construing a judgment, force and effect should be given every word, if possible, to give the judgment as a whole a consistent, effective and reasonable meaning." *Lawson*, 409 N.W.2d at 183.

We note that we agree with Edwin and the district court that the language in question merely allows either party the right to petition for support for Stacia's higher education. It does not by itself require Edwin to pay such support. It does not constitute an agreement on his part to pay such support, waive his right to

object to such a petition, or require the court to grant such a petition. However, we conclude that once Jody filed a petition seeking support for Stacia's higher educational costs and expenses, as the parties' agreed-to stipulation and the court's order allowed her to do, the district court was required to determine whether Edwin should contribute to such costs and expenses and if so in what amounts. Thus, the court erred in granting Edwin's motion to dismiss.

Finally, both parties seek an award of appellate attorney fees. As set forth above, Edwin's child support obligation was adjudicated under Iowa Code chapter 252A (1989).

> There is no authorization for attorney fees as a part of costs in a chapter 252A proceeding. The right to tax attorney fees is wholly statutory. There is no common law right to tax attorney fees as a part of costs.

In re Marriage of Fields, 508 N.W.2d 730, 732 (Iowa 1993). Neither party cites to any other authority for an award of attorney fees in an action under this chapter.

As chapter 252A does not authorize taxation of one party's trial attorney fees against the other party, it also does not authorize taxation of appellate attorney fees. *Cf. Schaffer v. Frank Moyer Constr., Inc*., 628 N.W.2d 11, 22-23 (Iowa 2001) (concluding that because statute providing for attorney fees did not limit attorney fees to those incurred in district court it therefore contemplated the award of appellate attorney fees); *Bankers Trust Co. v. Woltz,* 326 N.W.2d 274, 278 (Iowa 1982) (holding that the statute requiring an award of attorney fees when judgment is recovered upon a written contract containing an agreement to pay an attorney's fee justifies awarding attorney fees on appeal as well as in the trial court). Accordingly, we conclude neither party is entitled to an award of

appellate attorney fees, because the relevant statute does not authorize such an award.

Based on our de novo review, and for all the reasons set forth above, we conclude the district court erred in determining that because section 598.1(2) did not require postsecondary education support for children of unmarried parents Edwin could not be required to pay any such support here. The parties were free to, and did, agree to allow either party to petition for postsecondary educational support for Stacia beyond what the law would otherwise require. The court erred in granting Edwin's motion to dismiss. The court should have honored the parties' prior agreement as earlier accepted and approved by the court and determined what, if any, support for Stacia's higher educational costs and expenses Edwin should be required to provide. We reverse and remand this case to the district court to make those determinations.[3] Neither party is entitled to appellate attorney fees.

REVERSED AND REMANDED.

Vogel, J., concurs; Sackett, C.J., dissents.

[3] Although not an issue in this appeal, we note that where the previous statute provided for child support to go to the custodial parent, here Jody, under the current statute allowing for a postsecondary education subsidy, the subsidy shall be "payable to the child, the educational institution or both, but shall not be payable to the custodial parent." Iowa Code § 598.21F (2007). We mention this only because the effect of this change in the law might become an issue on remand.

SACKETT, C.J. (dissenting)

I respectfully dissent. I would affirm the district court.

The parties' stipulation provided either party could petition for costs of higher education "pursuant to Iowa Code section 598.1(2) (1989)."[4] I would agree with the majority if Stacia's parents had divorced. However, Stacia's parents never married. In *Johnson v. Louis*, 654 N.W.2d 886, 891 (Iowa 2002), the court noted that provisions for support or educational expenses for children beyond eighteen years of age and/or post high school under chapter 598 are intended for a benefited class of children. This class of children has had the attributes of a legally recognized parental relationship taken from them by court decree, and the educational benefit is a quid pro quo for the loss of stability resulting from divorce. *Johnson*, 654 N.W.2d at 891; *see also In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980). Stacia is not eligible for benefits under section 598.1(2). She does not meet the requirement to receive benefits under this section. Consequently, I believe the district court was correct in dismissing the petition and I would affirm.

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[4] Iowa Code section 598.1(2) (1998) provides in relevant part,

> 2. "Support" or "support payments" means an amount which the court may require either of the parties to pay . . . . 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, university, or area school; or has been accepted for admission to a college, university , or area school and the next regular term has not yet begun . . . .

Obviously parents who remain married and those who never marry are not required by law to support their children's higher education. This fact does not mean that these parents do not support their children's higher education endeavors. One would hope if Edwin voluntarily provides support as many married or never married parents do, that his generosity would engender his daughter's appreciation and help foster a strong father-daughter bond.

I recognize the Iowa Supreme Court has found the statute that allows a divorced parent to be ordered to pay post secondary education when other parents are not so obligated is constitutional. *Johnson*, 654 N.W.2d at 891. It noted that the statute was designed to meet a specific and limited problem, one which the legislature could reasonably find exists only when a home is split by divorce. *Id.* The court explained the legislature could find, too, that most parents who remain married to each other support their children through their college years while on the other hand, even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved. *Id.* It reasoned the differences in the circumstances between married and divorced parents establish the necessity to discriminate between the classes, and that the statute is neither arbitrary nor unreasonable. *Id.*; *see also Redmond v. Carter*, 247 N.W.2d 268, 271 (Iowa 1976) (stating that a state can divide persons into classes for legitimate purposes, but the distinction drawn cannot be arbitrary or unreasonable). I have difficulty accepting this distinction to justify the statute. I also see it as too frequently opening up or continuing through the child's early

adulthood, the wars of divorce, and at times robbing the disenfranchised parents of input into decision-making that could well benefit the child and strengthen the parent-child bond.[5]

[5] The legislature has in some respects corrected earlier problems in enacting section 598.21F (2007) by providing guidelines for the amount of support including the child's contribution, establishing obligations on the child, including retaining a certain grade point, not providing for an award if the child has repudiated the parent, and providing the subsidy be payable to the child or school, not a parent.