**IN THE COURT OF APPEALS OF IOWA**

No. 9-753 / 09-0037
Filed December 30, 2009

**IN RE THE MARRIAGE OF COLLEEN M. RUNDALL AND SCOTT RUNDALL**

**Upon the Petition of**
**COLLEEN M. RUNDALL,**
Petitioner-Appellant,

**And Concerning**
**SCOTT RUNDALL,**
Respondent-Appellee.

---

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

Colleen Rundall appeals from the district court's modification of the parties' 2003 New York dissolution decree. **AFFIRMED IN PART AND REMANDED.**

Thomas P. Lenihan, West Des Moines, for appellant.

Roger Hudson and Andrew Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**DANILSON, J.**

Colleen Rundall appeals from the district court's modification of the parties' 2003 New York dissolution decree. She asserts she is entitled to continuing spousal support and challenges the district court's modifications concerning childcare expenses and income tax exemptions. We affirm in part and remand for recalculation of child support.

**I. Background Facts and Proceedings.**

Colleen and Scott Rundall were married in September 1986. They had three children: Connor, born in 1992; Lauren, born in 1994; and Julia, born in 1998. In 2003, the Rundalls' marriage was dissolved by a New York decree. The decree incorporated the parties' extensive "Separation and Property Settlement Agreement." They agreed on the division of their assets and debts, each receiving personal property and bank accounts. Colleen was to receive the balance of the monies from the sale of their New York house ($66,763).

The agreement included several articles relating to education and support. The "Education"[1] article provided, in part:

> The parties recognize that the Wife does not have sufficient marketable education and skills to support herself and to contribute to the support of the parties' children. Also, the parties acknowledge that the husband has earned an M.B.A. degree during the marriage, and that under New York Law, the Wife would be entitled to an equitable distribution award equal to some portion of the appraised value of this degree. The Wife has agreed to waive such an appraisal and accept the provision for her education in lieu of a cash special distribution award for her claim on the Husband's degree. Therefore, the Husband shall contribute to the Wife's acquiring a Master of Arts in Teaching degree ("MAT") (or the nearest equivalent), including any undergraduate prerequisites

[1] Both the "Child Support" and "Education" articles of the agreement are numbered Article XIII.

> courses which the Wife must meet to be admitted to matriculate into the MAT program. The Husband shall pay half the cost of tuition for the Wife's degree. The cost of tuition for the Wife's program will be $484 per credit hour. The Wife shall provide proof of the costs, and the Husband shall pay to the Wife half of such costs. The parties have estimated that the total tuition costs will be approximately $22,000, and agree that the amount due from the Husband shall not exceed $11,000. Further, the Husband's obligation shall not extend beyond 10 years after any divorce between the parties, provided that he has paid all sums accrued up to that date. These payments shall not constitute alimony, maintenance or taxable income to the Wife.

Scott and Colleen agreed to "use their reasonable efforts to contribute financially" to the post-secondary education expenses of the children. Further, they agreed that if they are not able to agree on their respective contributions, "either party may make application to a court of appropriate jurisdiction to compel" contribution.

The "Child Support" article provides as follows:

> The parties establish herein a plan for spousal maintenance and child support which takes into account, during the time that maintenance is paid, the respective anticipated tax liabilities of the parties.
>
> Beginning the first of the month following the execution of this Agreement, the Father shall pay to the Mother as and for child support for the three (3) minor children of the parties the sum of $650 per month each month until December 31, 2008. The Father shall pay to the Mother a pro rated amount of child support for any portion of the month from the day after the execution of this Agreement until the first of the following month.
>
> Beginning January 1, 2009, provided the Father is employed at pay commensurate with this present base rate of pay, that is, $170,000 per year, the Father shall pay to the Mother as and for child support for the three (3) minor children, the sum of Three Thousand Nine Hundred Fifty Dollars ($3,950) per month until one or more of the children are emancipated as defined in this Agreement. The Husband acknowledges that the current $650 child support figure was set lower than his current child support obligation would ordinarily be in order to give the Husband the benefit of a greater alimony deduction from his income. When the Husband's maintenance (alimony) obligation ends if he is not

> employed at the pay equal to or greater than $170,000 per year, either the Husband or the Wife shall be entitled to bring an action in a court of competent jurisdiction to establish the amount of child support to be paid.
>
> . . . .
>
> . . . . The parties further understand that, in the absence of this Agreement between them, the provisions of the Child Support Standards Act would govern the determination of the amount of child support obligation to be paid by the non-primary residential parent to the primary residential parent. They acknowledge that the basic child support obligation calculated as provided for in the Child Support Standards Act would presumptively be the correct amount of the child support to be paid.
>
> . . . .
>
> The amount of basic child support agreed to herein deviates from the basic child support calculated pursuant to the Domestic Relations Law §240(1-b) for the sole reason that the parties have determined that the child support taken together with the spousal maintenance provided in this Agreement will result in greater after tax income to both of them and that given the factors upon which maintenance is determined under New York law, the Wife is entitled to the amount of spousal maintenance provided in this Agreement. The Husband acknowledges that the current $650 child support figure is set lower than his current child support obligation would ordinarily be in order to give the Husband the benefit of a greater alimony deduction from his income. Further, considering the inevitable financial difficulties of a separation and divorce, the parties believe that the child support and maintenance provided herein will result in meeting the basic needs of the Wife and the children without depriving the Husband of the amount of money that the Court would likely reserve to him for his support under New York Law as applied by the Courts of the jurisdiction in which a divorce between the parties is currently pending.

Scott was to pay to Colleen $4110 per month "for her support, maintenance and alimony" until December 31, 2008. In addition, the agreement called for "additional spousal maintenance" of "28% of any and all bonuses to a maximum of $14,280, 86.5% of which shall be deemed additional spousal maintenance, and 13.5% of which shall be deemed additional child support." If Colleen earned more than $28,000 "from employment," "the amount of maintenance paid herein shall be reduced by Fifty Cents ($.50) for every One

Dollar ($1.00) in excess of Twenty-Eight Thousand Dollars after income and wage taxes." Scott was also to pay $7500 "additional maintenance" in twenty-four equal monthly installments "in consideration of the attorney's fees incurred," which could not be prepaid.

In the article entitled "Dental and Special Payments," the parties agreed Scott would provide comprehensive medical insurance until the children were "emancipated as defined in this Agreement." In addition, Scott was to provide "a pro rata proportion of the child care necessary for [Colleen] to work and/or complete her Master of Arts in teaching degree including any student teaching requirement," set then at ninety-two percent. The percentage was to be readjusted annually.

On December 22, 2003, the New York court filed a "Judgment of Divorce." In a separate filing that same date, the court's "Findings of Fact and Conclusions of Law," includes the following:

> SEVENTH: C. Defendant [Scott] induced Plaintiff [Colleen] to join with him in the purchase of a house in Rochester, New York, which cost $406,900, even though such a house was a "stretch" on their budget, when in reality the house was a reckless purchase, given that Defendant had good reason to believe that he might be imminently separated from his employment without immediate prospects of new employment.
>
> . . . .
>
> NINTH: That Plaintiff and Defendant entered into a Separation Agreement . . . which has settled all matters between them including distribution of property and maintenance. Said Separation Agreement was fair and reasonable when made and is not unconscionable.
>
> . . . .
>
> ELEVENTH: That Defendant shall pay to Plaintiff the sum of Four thousand One Hundred Ten Dollars ($4110.00) per month for her support, maintenance and alimony until December 31, 2008, unless earlier terminated by the Plaintiff's remarriage, pursuant to

> the terms of the parties' Separation and Property Settlement Agreement.
>
> . . . .
>
> EIGHTEENTH: The award of child support in accordance with the D.R.L. §240(1-b) is based upon the following findings:
>
> . . . .
>
> B. The income of the Plaintiff, who is the sole custodial parent is Zero Dollars ($0) per year;
>
> C. The income of the Defendant, who is the non-custodial parent is Two Hundred Thirty Eight Thousand One Hundred Seventy Six Dollars ($238,176) per year[2] . . . ;
>
> D. The applicable child support percentage is twenty-nine percent (29%);
>
> E. The *presumptively correct basic support obligation would be Three Thousand Nine Hundred Fifty Dollars ($3,950.00) per month, plus expenses for health care* not covered by insurance;
>
> . . . .
>
> The parties have entered in a Separation and Property Settlement Agreement dated October 17, 2003, wherein Defendant agrees to pay $650.00 per month for child support through December 31, 2008 and thereafter Defendant agrees to pay $3,950.00 per month for child support until one or more of the children are emancipated as defined in the Separation and Property Settlement Agreement . . . .
>
> The amount of child support agreed to therein deviates from the basic child support obligation, and the parties' reasons for deviating from the presumptive amount are: (i) that the Defendant is paying $4,110 per month maintenance; ([ii]) that the Defendant will pay $3,9[5]0 child support after the termination of maintenance; and (iii) that Defendant is paying certain sums toward the Plaintiff obtaining further education.

(Emphasis added.) The court approved the deviation from the presumptive amount of child support "because the total of maintenance and child support will provide for the needs of the children." The court concluded "the Separation and Property Settlement Agreement entered into by the Plaintiff on August 28, 2003 and by the Defendant on October 18, 2003 shall be incorporated, but not merged, in the Judgment of Divorce."

---

[2] Scott's income was apparently adjusted for "maintenance being paid."

Scott was ordered to pay "92% of the child care necessary for [Colleen] to work and/or complete her Master of Arts in teaching degree . . . pursuant to the terms of the Separation and Property Settlement Agreement."

In May 2007, Colleen filed a petition for modification of child support in Iowa, asserting Scott's income had substantially increased. Scott answered and cross-petitioned for modification of the support and custody provisions of the dissolution decree. He asserted that if the $650 in child support was modified, other terms of the decree should also be modified, including when child support should terminate, the custody and visitation arrangements, child care expenses, who should receive the tax exemptions for dependents, and medical insurance issues. Colleen moved to dismiss Scott's cross-petition for modification of alimony, asserting the Iowa court lacked jurisdiction pursuant to Iowa Code section 252K.205(6) (2007) ("A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."). Scott resisted, asserting the alimony obligation was alimony in name only, that it was in essence child support. Colleen then moved to amend her petition, seeking modification of the alimony provisions of the decree. The district court allowed the amendment, ruling that it had jurisdiction to modify the alimony provisions because the language of the New York decree made alimony part of the child support. The issues of child support and alimony were tried to the court on August 19, 2008.[3]

[3] Scott voluntarily dismissed his cross-claims for custody and visitation, which were then re-filed in Illinois.

In July 2003, Colleen and the children moved to Northfield, Illinois. They rented a house at first, but in 2005 purchased it for $550,000 with financial assistance from Colleen's father. Colleen had a college degree and worked during the early years of her marriage to Scott, but ceased working outside the home upon the birth of their second child. She testified, "It has been very difficult to get back in the job market at age 40." She testified she "chose not to go back into teaching because I couldn't afford to do that and not earn income." Rather, she started working part-time. By 2006 Colleen was working full-time as an office manager/secretary earning $44,000 per year. She testified she had not received any raises since 2006: "I ran into significant problems with childcare and health issues and had to cut back my hours and am working at home on Thursdays and Fridays, so they left my salary at [$]44,000."

Colleen testified that she has incurred substantial debt since moving to Illinois. Her current monthly living expenses are in excess of $7900.[4] The oldest child is enrolled in a private high school, tuition for which is $11,500 per year. The children are involved in many extracurricular activities, including dance, soccer, and volleyball. She had been paying a private tutor for one child, but could no longer afford to do that and owed money to the tutor. Colleen testified she had assistance from part-time help providing care and transportation for the children before and after school while she was at work. She stated that after she got home from work, she drove the children to their various activities from 6 p.m. to 8:30 or 9 p.m. Colleen testified that Scott was behind in paying childcare

[4] In addition, Colleen's father pays $500 per month toward her home equity loan and provides her with a $250 per month gas stipend.

expenses and had taken it upon himself to prorate those expenses, asserting that the oldest, now age sixteen and driving, did not need childcare. She testified, however, that she had to pay the same for childcare whether there were two or three children needing assistance. She also testified that Scott had not paid medical expenses as agreed.

Colleen further testified that since the divorce she has experienced symptoms of an anxiety disorder, including insomnia and panic attacks, which she relates to financial strain and the obligations of being the parent with sole responsibility for childcare. She takes medication for the anxiety. In 2007, she developed tremors, which were later diagnosed as "manifestations of an extra pyramidal brain disease, most likely Parkinson's." Colleen's physician has recommended that "she take a medical leave of absence until such time as her life stressors have diminished." She testified she could not afford to take the advised medical leave.

Colleen testified that she and the children have not been able to maintain the standard of living they enjoyed during the marriage.

> There are no pool memberships. There are no country clubs, which is fine. We don't take family vacations. . . . I'm away from them. I was a stay-at-home mom and loved it and was involved. Our lives have dramatically, dramatically changed.

Colleen asked that the court order continuing spousal support in the amount of $5500 per month, child support in the guideline amount of $4103.18, and $900 per month for childcare expenses. She also requested an award of attorney fees and expenses.

On cross-examination, Colleen acknowledged the terms of the parties' settlement agreement. She testified that Scott had paid the $4110 spousal support and $650 child support per month promptly and had paid her a portion of his bonuses as per the agreement. She also acknowledged that even though she was earning in excess of $28,000 per year, Scott had not reduced the amount of alimony he paid, as permitted under the parties' agreement.[5] Colleen further testified she had not consulted Scott before enrolling their oldest child in private school and acknowledged there was nothing in the divorce decree that required that Scott pay for private schooling. She also testified that she and the children had not always used Scott's insurance carrier's preferred providers.

Colleen's father, Lawrence Keefe, testified that he lived in Northbrook, Illinois, and that Colleen and the children had lived with him when they first moved back to Illinois. He testified he had been paying her legal fees. He had helped find the rental house in the adjoining suburb for Colleen and had provided the down payment ($64,900) for Colleen to purchase the house. He testified that he was making the payments on her $80,000 home equity loan. He provided about $750 per month in support for Colleen and was of the opinion that without his support she could not maintain the house.

Scott moved from California to Iowa in 2004. His current base salary is $265,000 per year. In addition, he has received bonuses for the past five years

---

[5] As noted above, the maintenance provision of the separation agreement (Article XV), incorporated into the divorce decree, provides in part:

> If, prior to January 1, 2009, Mother earns from employment more than Twenty-Eight Thousand Dollars, after income and wage taxes the amount of maintenance paid herein shall be reduced by Fifty Cents ($.50) for every One Dollar ($1.00) in excess of Twenty-Eight Thousand Dollars after income and wage taxes."

ranging from $80,000 to $153,495. He testified that he was not consulted about sending their child to private high school. He also testified Colleen's requests for childcare reimbursement were confusing and lacking in corroborating receipts.

**II. Scope and Standard of Review.**

This action for modification of a dissolution decree is an equity case. *See* Iowa Code §§ 598.3 (2007) ("An action for dissolution of marriage shall be by equitable proceedings. . . ."), 598.21C (providing for modification of orders for disposition and support when there is a substantial change in circumstances). Our review is thus de novo. Iowa R. App. P. 6.907. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. 6.904(3)(*g*). We accord the district court considerable latitude in making its determinations and will disturb its rulings only where there has been a failure to do equity. *In re Marriage of Rietz,* 585 N.W.2d 226, 229 (Iowa 1998).

**III. Analysis.**

We begin our analysis with these relevant legal principles. "[C]hild, spousal, or medical support orders" of a dissolution decree may be modified when there has been "a substantial change in circumstances." Iowa Code § 598.21C(1) (enumerating factors to be considered for modification); *see In re Marriage of Pals*, 714 N.W.2d 644 ,646 (Iowa 2006). The legislature has at times altered the required showing of a substantial change in circumstances by describing specific circumstances that permit modification. *Pals*, 714 N.W.2d at 647; *see, e.g.*, Iowa Code § 598.21C(2)(a) ("[A] substantial change of circumstances exists when the court order for child support varies by ten percent

or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to section 598.21B or the obligor has access to a health benefit plan, the current order for support does not contain provisions for medical support, and the dependents are not covered by a health benefit plan provided by the obligee . . . .").  However, parties can contract alimony is not modifiable.  *In re Marriage of Aronow*, 480 N.W.2d 87, 89 (Iowa Ct. App. 1991) (citing *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989)).

**A. Alimony.** In seeking to extend spousal support, consideration must be given to Article XV of the parties' separation and property settlement agreement, which provides in part:

> That said parties, having been fully advised as to their rights in regard to spousal support and maintenance, do hereby relieve and forever discharge each other from any and all manner of actions, suits . . . and any and all claims . . . against either party . . . ever had, now have, or may in the future have . . . including but not limited to any and all claims for spousal support, separate maintenance, alimony payments, in the nature of spousal support or maintenance other than as provided herein . . . and do hereby waive, relieve and forego any and all right to seek spousal support, alimony and/or separate maintenance . . . other than as provided herein.

We first reject Colleen's assertion that "the spousal support provisions of the parties' property and settlement agreement are clearly inequitable and should not be enforced by a court of equity."  We note specifically that the dissolution decree incorporated the parties' stipulation; both parties were represented by counsel; and no appeal was taken.  There is no timely petition to vacate the judgment on fraud, mistake, or irregularity.  *See* Iowa Rs. Civ. Proc. 1.1012, 1.1013.  Colleen's argument constitutes an impermissible attempt to collaterally attack the original dissolution decree.  "It is well-established that a decree or

judgment generally cannot be attacked collaterally. *Heishman v. Heishman*, 367 N.W.2d 308, 309 (Iowa Ct. App. 1985). The only exception is when a judgment is void for lack of jurisdiction, *id*., which is not claimed here.

Colleen next contends Scott waived enforcement of the parties' separation and property settlement agreement prohibiting modification of alimony by cross-petitioning for modification of alimony. The district court addressed this assertion in its amendment and enlargement of findings, conclusions, and order: "That [Scott] may have initiated or consented to the jurisdiction of the Iowa Courts doesn't mean that the entire matter is to be relitigated premised on an estoppel or waiver theory." We agree.

Waiver requires a voluntary and intentional waiver of a known right. *Huisman v. Miedema*, 644 N.W.2d 321, 324 (Iowa 2002). It must be made intentionally and with knowledge of the circumstances. *Millsap v. Cedar Rapids Civil Serv. Comm'n*, 249 N.W.2d 679, 683 (Iowa 1977). The party asserting the waiver bears the burden of proof. *In re Estate of Warrington*, 686 N.W.2d 198, 202 (Iowa 2004); *see also Johnson v. Johnson*, 301 N.W.2d 750, 753 (Iowa 1981) (noting that the burden is on the party who claims loss of rights by an adverse party through acquiescence to show facts supporting the contention).

Here, Colleen initiated this proceeding seeking to modify the child support provisions of the parties' decree and to extend indefinitely Scott's alimony obligation. Scott responded that the provisions of the dissolution decree governing alimony and child support were intertwined and must be considered together. We are unable to conclude that Scott intentionally waived enforcement

of the parties' earlier settlement and dissolution decree by responding to Colleen's modification petition or cross-petitioning for modification of alimony.

Colleen's fallback position is that "[i]t remains within the power and authority of a court in equity to fashion an equitable remedy to implement justice and fairness between the parties." She characterizes the spousal maintenance provided in the original decree as rehabilitative alimony, which may be modifiable despite an agreement to the contrary. We acknowledge that "[u]nder our cases there are rare situations where, notwithstanding an agreement and decree to the contrary, later occurrences are so extreme in their nature as to render the initial understanding grossly unfair and therefore subject to change." *In re Marriage of Wessels*, 542 N.W.2d 486, 489 (Iowa 1995).

In *Wessels*, the court concluded that rehabilitative alimony, set to terminate at a given time, could, in "extreme situations," be extended and made permanent by reason of unforeseen changed circumstances. *Id*. at 487. In that case, the dissolution decree adopted the parties' stipulation, which provided James Wessels would pay Yvonne Wessels rehabilitative alimony in the amount of $3100 per month for a period of sixty months and for up to two years $700 per month if she attended a full-time, post-graduate program. *Id*. Yvonne was to make every reasonable effort to become self-sufficient. *Id*. Unfortunately, despite good faith efforts to become self-sufficient, severe and debilitating mental illness left Yvonne unable to ever work again. *Id*. at 488.

The district court concluded that "Yvonne's worsening psychiatric problems, the lack of health insurance benefits, her increased medical expenses, her unemployability, the increased financial resources of James and the reduced

assets of Yvonne" constituted a significant change in circumstances warranting modification of the decree. *Id*. at 489. The appellate court affirmed, holding that the situation qualified "as the sort of rare and unique change that demanded the extraordinary relief" the former wife sought. *Id*. at 490.

Here, the parties' settlement agreement and the dissolution decree provided Colleen with a substantial property settlement, $11,000 for tuition for Colleen to acquire a Master of Arts in Teaching degree,[6] and support in excess of $4700 per month for five years ($650 designated as child support and $4110 "for her support, maintenance and alimony") plus twenty-eight percent of any and all bonuses Scott received (capped at $14,280). The spousal maintenance obligation was to terminate on December 31, 2008, at which time child support was to increase to $3950 per month.

Colleen presented evidence that she now suffers from an anxiety disorder and is currently displaying medical symptoms consistent with the initial stages of Parkinson's disease. She argues that her physical condition, her inability to maintain the standard of living enjoyed during the marriage, and the inadequacy of the initial alimony award qualify for modification of alimony.

We do not believe this is one of the rare cases demanding extraordinary relief. Colleen's physician opined that "prognosis for her anxiety problems are good and are expected to improve significantly after the excessive life stressors resolve."[7] He also testified that "she's not disabled at all as far as I can tell from the Parkinson's. But if it worsens, then that will add to her underlying anxiety

[6] Colleen did not pursue this degree.

[7] He explained that these excessive life stressors were "ongoing litigation and financial and childcare issues and work, slash, income issues."

disorder." Medications have "led to vast improvement in the tremors." Colleen remains employed as an office manager/secretary earning $44,000 per year. She has health insurance coverage. In addition to her income, she will receive child support in the amount of $4105 per month as long as support is due for three children, $3620 per month when support is due for two children, and $1665 when support is due for one child. We do not find these circumstances akin to those presented in *Wessels. See also In re Marriage of McCurnin*, 681 N.W.2d 322, 329-31 (Iowa 2004) (extending alimony where former spouse had never been able to work full time and earning potential "by any measure is below poverty level," she was solely responsible for care of parties' five children, and youngest child had developed an asthmatic condition that required mother to negotiate with part-time employers that she be able to leave work at a moment's notice, which had occurred on a weekly basis for several years). We do not conclude there has been a failure to do equity. *See In re Marriage of Rietz,* 585 N.W.2d 226, 229 (Iowa 1998).

We affirm the trial court's ruling that alimony terminate on December 31, 2008, as set forth in the terms of the dissolution decree.

**B. Childcare Expenses and Income Tax Exemption.** The trial court concluded there had been a change of circumstances warranting modification of child support "based on a change of income of the parties without consideration of other factors." The court concluded that child support would remain in effect until December 31, 2008, per the agreement of the parties. Thereafter, pursuant

to the Iowa Child Support Guidelines,[8] Scott was to pay twenty-one percent of his present net income as child support ($4105 per month).[9]

The court ordered that Scott receive the dependency exemption for one child, Colleen for another, and the exemption for the third child would alternate between the parties. Scott was to continue to maintain the health insurance on the children and pay eighty-six percent of unpaid medical expenses. The court concluded that Scott's obligation to pay childcare expenses would terminate on December 31, 2008.

Colleen argues that the district court erred in ending Scott's obligation to pay childcare expenses and in altering the dependency exemption allocation as those matters were included in the parties' "Separation and Property Settlement Agreement."

Scott contends the child support guidelines are designed to take all reasonable living expenses into account, including daycare expenses. He also argues that courts have the authority to award tax exemptions to achieve an equitable resolution of the economic issues presented. *See In re Marriage of Okland*, 699 N.W.2d 260, 269-70 (Iowa 2005).

The child support guidelines take into account the reasonable costs of living for dependent children, including educational expenses and expenses for clothes, school supplies, and recreation activities. *In re Marriage of*

---

[8] The child support guidelines have since been amended, effective July 1, 2009.

[9] Under the former guidelines, a noncustodial parent with a monthly income of $10,000 is to pay 21.1 percent of income as child support for three children. "For net monthly income above $10,000, the appropriate figure is deemed to be within the sound discretion of the court . . . ." Here, the district court applied the 21.1 percentage rate to Scott's entire net monthly income, which percentage is adjusted as the children no longer qualify for support.

*Kupferschmidt*, 705 N.W.2d 327, 334 (Iowa Ct. App. 2005). We have said that a separate support order covering such expenses is improper absent a finding that the guidelines amount would be unjust or inappropriate. *Id*.

Additionally, tax exemptions for children subject to child support may be allocated by the district court. *See id.* at 337. "[A]llocations of these tax exemptions, being directly related to child support, are subject to the general rules for modification of child support." *Id.*

The problem here, however, is that the trial court modified and re-allocated the tax exemptions, but calculated child support as though Colleen retained all three exemptions. Because we remand for recalculation of child support, we do not resolve the remaining issues presented. Because the determination of child support can only be accomplished after considering the allocation of tax exemptions and any appropriate deviation from the guidelines, the trial court is free to consider these relevant issues under the new child support guidelines, which became effective July 1, 2009.

**IV. Conclusion.**

We affirm the trial court's ruling that alimony terminate on December 31, 2008, as set forth in the terms of the dissolution decree. We remand this matter for recalculation of child support. Costs of appeal are to be divided equally between the parties.

**AFFIRMED IN PART AND REMANDED.**