



IN RE THE MARRIAGE OF TRACY LYNN HOFFMAN AND ERNST FRANKLIN HOFFMAN Upon the Pet

2016 | Cited 0 times | Court of Appeals of Iowa | December 21, 2016

IN THE COURT OF APPEALS OF IOWA

No. 16-0045 Filed December 21, 2016

IN RE THE MARRIAGE OF TRACY LYNN HOFFMAN AND ERNST FRANKLIN HOFFMAN

Upon the Petition of TRACY LYNN HOFFMAN N/K/A BAIN, Petitioner-Appellant,

And Concerning ERNST FRANKLIN HOFFMAN, Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Petitioner appeals child support award in modification decree.

AFFIRMED.

Eric G. Borseth of Borseth Law Office, Altoona, for appellant.

Alexander E. Wonio of Hansen, McClintock & Riley, Des Moines, for
appellee.

Considered by Danilson, C.J., and Doyle and McDonald, JJ. 2

MCDONALD, Judge.

This appeal arises out of a dissolution-modification proceeding. The
matter comes before the court following remand to determine child support. By
way of background, Tracy Bain f/k/a Hoffman man



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M.H. in 1999 and Z.H. in 2002. Pursuant to a stipulation regarding custody and care, the parties were awarded joint legal custody of the children with primary care of the In re Marriage of Hoffman (Hoffman I), No. 13-1757, 2014 WL 3511893, at *1 (Iowa Ct. App. July 16, 2014). From the time of the divorce until 2012, both Tracy and Ernie resided in close proximity to each other in the Des Moines metropolitan area.

In 2012, Tracy relocated to Albia, approximately seventy miles away. See

id. at *1. Ernie subsequently filed a modification action, seeking physical care of

M.H. and Z.H. See id. at *1. The district court granted Ernie modification. See id. at *2. This court reversed the judgment of the district court

and remanded the matter to determine visitation and child support:

With the reversal of the district court decisions concerning custody, Tracy asks that we require Ernie to pay child support consistent with the Child Support Guidelines. See Iowa Code § 598.21B. Prior to the modification, Ernie was paying \$2000/month in child support. Tracy argues the guidelines require Ernie to pay support of \$2,988.30/month, a 10% variation constituting a substantial change of circumstances under Iowa Code section 598.21C(2)(a) that gives our court the right to modify child support. We remand to the trial court to determine child support obligation under the guidelines commencing the date

of the decree from which appeal was taken. . . . For the foregoing reasons, we reverse the judgment of the district court and remand this matter for further proceedings not 3

inconsistent with this opinion. We do not retain jurisdiction over this matter. Costs on appeal are taxed equally to the parties.

See id. at *8. On further review, the supreme court affirmed this court and

remanded the matter for further proceedings:

Because we conclude Ernie has failed to prove the children's move to Albia constitutes a substantial change of circumstances or that his ability to minister to the needs of the children is superior to



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Tracy s, we conclude the district court erred in modifying the dissolution decree. Accordingly, we affirm the decision of the court of appeals and reverse the district court s modification ruling. We remand to the district court for a determination of an appropriate visitation schedule and modification of Ernie s child support obligation based on the present financial circumstances of the parties and the child support guidelines.

See In re Marriage of Hoffman (Hoffman II), 867 N.W.2d 26, 37 (Iowa 2015).

On remand, the district court determined Ernie should pay child support in

the amount of \$2921.40 per new child support obligation should not be retroactive, there having been no

showing that it would be unfair to petitioner or the children for the new child

support obligation to be prospective only nor any showing that the Tracy timely filed

her appeal.

On appeal, Tracy contends the district court erred in failing to make the

child support award retroactive. Specifically, she argues the district court acted

. She also argues,

independent of the first point, it was error to make the child support award

prospective only. Our review is de novo. See id. at 32.

We address trial court is required to honor and respect the rulings and mandates by appellate 4

City of Okoboji v. Iowa Dist. Ct., 744 N.W.2d 327, 331 (Iowa

2008). There can be only a single mandate with respect to a particular issue.

Thus, when the supreme court takes further review of an opinion of this court, the

judgment and mandate of this court has no force or effect with respect to the

issue or issues addressed by the supreme court. See id. On remand, the



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jurisdiction of the case is returned to the district court for the purpose of doing the act authorized or directed by the appellate court in its opinion and nothing else. If the district court proceeds contrary to the mandate, its decision is viewed as null and void. (citation omitted)); Anderson v. State, 692 N.W.2d 360, 363 (Iowa or limit our review to just those issues brought to our attention by the application); see also Duncan v. Michigan, 832 N.W.2d 761, 768 (Mich.

Ct. App. 2013) Where a case is taken on appeal to a higher appellate court, the law of the case announced in the higher appellate court supersedes that set forth in the intermediate appellate court. However, rulings of the intermediate appellate court remain the law of the case insofar as they are not affected by the (internal

marks omitted)); Bramlett v. Phillips, 359 S.W.3d 304, 310 11 (Tex. App. 2012) opinion and judgment remain in force and effect on those issues unaddressed by the supreme court).

In this case, both this court and the supreme court addressed child support. This court determined the child support obligation should commence on the date of the decree from which appeal was taken. Hoffman I, 2014 WL 3511893, at *8. In other words, the child support should be retroactive based on 5 directed the support obliga based on the present financial circumstances of the parties and the child support guidelines Hoffman II, 867 N.W.2d at 37.

The clear



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to determine a new child support

remand

hearing and to commence the new child support obligation at that time. See *In re*

Marriage of Davis, 608 N.W.2d 766, 769 (Iowa 2000) hat is contemplated in

the appellate opinion by necessary implication may be considered equivalent to

). By making the child

support award prospective only, t r and

City of Okoboji, 744 N.W.2d at 332. This claim

of error fails.

With respect to the second claim of error, Tracy contends the district court

should have nonetheless made the support obligation retroactive on equitable

in

accordance with the mandate and the law of the case as established on appeal. *Id.* (citation omitted).
support obligation operate only prospectively. The district court was thus barred

from making the child support obligation retroactive. Further, making a support

award retroactive is permissible, not mandatory, and the district court has

discretion in determining whether such retroactive application is warranted. See

In re Marriage of Ober, 538 N.W.2d 310, 313 (Iowa Ct. App. 1995). Even if we

were to determine there was not a clear mandate by the supreme court, here, the 6

district court independently determined retroactivity was not warranted here.

Tracy has not identified any abuse of discretion, and we find none.



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ll appellate fees

and costs shall be taxed to the unsuccessful party, unless otherwise ordered by

Iowa R. App. P. 6.1207. Appellate costs do not

include appellate attorney fees. Although appellate attorney fees are not

awarded as a matter of right, we may award such fees as a matter of discretion.

See In re Marriage of Kurtt, 561 N.W.2d 385, 389 (Iowa Ct. App.1997). determining whether to award appellate attorney fees, we consider the needs of

the party making the request, the ability of the other party to pay, and whether

the party making the request was obligated to defend the decision of the trial

Id. Tracy was unsuccessful in her appeal. We decline her fee

request.

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

