



IN RE THE MARRIAGE OF JACQUELINE BUSCH VAN METER AND CLARKE JENNINGS VAN METER

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IN THE COURT OF APPEALS OF IOWA

No. 16-0049 Filed December 21, 2016

IN RE THE MARRIAGE OF JACQUELINE BUSCH VAN METER AND CLARKE JENNINGS VAN METER

Upon the Petition of JACQUELINE BUSCH VAN METER, Petitioner-Appellee,

And Concerning CLARKE JENNINGS VAN METER, Respondent-Appellant.

Appeal from the Iowa District Court for Delaware County, Todd A. Geer

(modification order) and Thomas A. Bitter (child-support order), Judges.

Clarke Van Meter appeals certain economic provisions of the orders

modifying the decree dissolving his marriage to Jacqueline Busch Van Meter.

AFFIRMED AS MODIFIED.

Mark A. Roeder of Roeder Law Office, Manchester, for appellant.

Cory R. Thein of Pioneer Law Office, Dubuque, for appellee.

Considered by Danilson, C.J., and Mullins and Bower, JJ. MULLINS, Judge.

Clarke Van Meter and Jacqueline Busch Van Meter were divorced in June

2007. Pursuant to the dissolution decree, Jacqueline was awarded physical care

dissolution. In September 2015, the district court entered its order modifying the

decree, granting the parties joint physical care of their child. Clarke then filed a



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moti Iowa Rule of Civil Procedure 1.904(2), which the district court granted in part and denied in part. The district court subsequently entered an order setting child support, which wa filing of additional rule 1.904(2) motions. Clarke now challenges three economic provisions resulting from these orders: (1) ax exemption to Jacqueline; (2) income when calculating her child-equal division of uncovered medical expenses between the parties.

Because an action to modify a dissolution decree is heard in equity, our review is de novo. See Iowa R. App. P. 6.907; In re Marriage of Sisson, 843 N.W.2d 866, 870 (Iowa 2014). We give weight to the factual findings of the district court, especially with regard to witness credibility, but we are not bound by them. See Iowa R. App. P. 6.904(3)(g); In re Marriage of McDermott, 827 N.W.2d 671, 676 (Iowa 2013). Case precedent has little value and we must base our decision on the particular circumstances of the case before us. See

Melchiori v. Kooi, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002). Clarke first claims the tax exemption for the minor child should be rotated

between the parties every other year. 1 Clarke claims the tax exemption would provide greater benefit to him who makes approximately \$60,000 a year than it would to Jacqueline to whom he attributes a gross annual income of \$230,071, approximately \$90,000 over the \$140,000 imputed by the district court.

We note Jacqueline was awarded the dependency tax exemption in the original



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divorce decree. The burden rests with Clarke, as the party seeking modification, to show a change in circumstances justifying a modification of the tax exemption award. See *In re Marriage of Okland*, 699 N.W.2d 260, 269 (Iowa 2005). Here, the parties now have joint physical care of the child, with Jacqueline paying child support to Clarke as a result of the modification and her significantly higher income. On modify its award of the dependent tax exemption to Jacqueline.

Clarke next claims the district court erred in declining to include

Jacqueline's child-support obligation. Clarke

contends he proved at trial Jacqueline earns \$70,800 in annual rent and

Jacqueline failed to produce evidence regarding deductible expenses from these

income properties. In its determination as to the amount of net rental income, if any, [Jacqueline] receives

1 Jacqueline claims error was not preserved on this issue. We note the modification order sums on the properties to make them habitable. [Jacqueline] also testified that

assertion, Jacqueline provided evidence in the form of her testimony which the

district court found credible. We defer to that finding of credibility and affirm on

this issue.

Finally, Clarke alleges the district court erred in making the parties equally

responsible for all uncovered medical expenses for the child. Jacqueline

counters the division is equitable because she provides health insurance for the

minor child. Iowa Court Rule 9.12(5) shall share all uncovered medical expenses in proportion to their respective net



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district court found Clarke has an annual income of \$60,000 and Jacqueline has an annual income of \$140,000. The court apparently relied on the child support guidelines worksheet filed on December 28, 2015, that showed s net monthly income at \$7868.34, , proportional shares of income as 68.5% and 31.5%, and, as finally ordered by the district court, net monthly child support of \$405.73. Using these amounts, we determine the modification order should be and is hereby modified to provide Jacqueline shall pay 68.5% of all uncovered medical expenses and Clarke shall pay the remaining 31.5%. See, e.g., In re Marriage of Petersen, No. 15-0282, 2016 WL 1757628, at *4 (Iowa Ct. App. Apr. 27, 2016) (reapportioning the uncovered medical expenses from the mother paying two-thirds to the father paying two-thirds (health insurance for the children). Both parties request an award of their appellate attorney fees. Appellate attorney fees are not a matter of Okland, 699 N.W.2d at 270. In determining whether to award attorney fees, we to pay, and the relative merits of the ap Id. Having considered these factors, we determine the parties shall bear their own appellate attorney fees.

AFFIRMED AS MODIFIED.

