

IN THE COURT OF APPEALS OF IOWA

No. 4-113 / 93-663

FILED

OCT 25 1994

CLERK SUPREME COURT

IN RE THE MARRIAGE OF RICHARD D. ABBEN AND DEBRA K. ABBEN

Upon the Petition of
RICHARD D. ABBEN,

Appellee,

And Concerning
DEBRA K. ABBEN, n/k/a
DEBRA K. CUNNINGHAM,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County, Lawrence H. Fautsch, Judge.

Debra K. Abben appeals a modification of the parties'
dissolution decree contending the district court erred in
its calculation of child support. **AFFIRMED AS MODIFIED.**

James L. Wagner of Gartelos, Wagner & Ament, Waterloo,
for appellant.

David H. Correll of Correll & Sheerer, Cedar Falls, for
appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

Debra and Richard Abben were divorced in 1978. The dissolution decree incorporated the parties' stipulation. Under the decree, Debra was granted custody of the parties' child, Matthew, born on January 5, 1978. Richard agreed to pay child support of \$35 per week, which is \$151.67 per month.

Debra filed an application for modification in December 1981, seeking an increase in Richard's child support obligation. In March 1983 the district court entered an order approving the parties' stipulation to increase Richard's child support obligation to \$40 per week, which is \$173.33 per month.

On February 3, 1992, Debra filed an application to modify the decree and to interpret the parties' stipulation. She claimed there had been a substantial change in circumstances and sought to have Richard's child support obligation set according to the child support guidelines.

A modification hearing was held on January 26, 1993. At the hearing, Debra testified she was employed part-time at Hy-Vee in Waterloo and has net monthly income of about \$598. Debra has remarried, and her name is now Debra Cunningham. Debra's husband also works at Hy-Vee, and he earns about \$33,000. Debra stated she calculated Richard's net monthly income to be \$1,730.

Richard testified he was employed as a deputy sheriff by the Black Hawk County Sheriff's Department. He earns \$27,601.60. He stated his net monthly income was \$1,536.60. Richard has also remarried, and he has three children with his current wife.

The district court determined there had been a substantial change in circumstances under Iowa Code section 598.21(9), as amended effective July 1, 1992. The court found Richard's net monthly income was \$1,536.60. The court applied the child support guidelines and ordered Richard to pay \$85.81 per week, which is \$371.84 per month.

Debra filed a motion pursuant to Iowa Rule of Civil Procedure 179(b), claiming the district court had improperly calculated Richard's net monthly income. The district court denied the motion. Debra appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

We agree with the district court's conclusion section 598.21(9) applies to the present case and there has been a substantial change in circumstances under this section. Section 598.21(9) provides:

Notwithstanding subsection 8, a substantial change of circumstances exists when the court order for child support deviates by ten percent or more from the amount which would be due pursuant to the most

current child support guidelines established pursuant to subsection 4.

The supreme court has ruled this section should be applied to all cases heard after July 1, 1992. Schuler v. Rodberg, 516 N.W.2d 902, 904 (Iowa 1994). Richard admits there has been a substantial change in circumstances under this section.

Once it is determined child support should be modified, the present guidelines should be applied. In re Marriage of Bergfeld, 465 N.W.2d 865, 870 (Iowa 1991). In order to apply the child support guidelines, a court must determine the parents' current monthly income from the most reliable evidence presented. In re Marriage of Powell, 474 N.W.2d 531, 534 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parents' income. Id.

Debra contends Richard's state and federal income tax withholding was greater than his tax liability according to tax charts. By having a greater amount withheld for taxes, Richard's pay stub showed a reduced net monthly income. However, Richard would be able to recoup these funds by receiving a refund on his taxes. Debra presented evidence to show Richard was withholding \$305 for federal taxes each month, when his actual withholding with five exemptions should have been \$126. There was also evidence he was withholding \$118 for state taxes each month, when his actual withholding should have been \$106.

We conclude the most reliable evidence shows Richard's net monthly income is \$1,730. Under the child support guidelines, Richard should pay child support of \$418.66 per month for Matthew. Because Richard has been paying weekly, he may pay this amount as \$96.61 per week. We modify the dissolution decree to increase Richard's child support obligation to this amount.

We affirm the decision of the district court to increase Richard's child support obligation. However, we further modify the decree to provide Richard should pay \$418.66 per month or \$96.61 per week. Costs of this appeal are assessed to Richard Abben.

AFFIRMED AS MODIFIED.