

IN THE COURT OF APPEALS OF IOWA

No. 2-101 / 91-1351

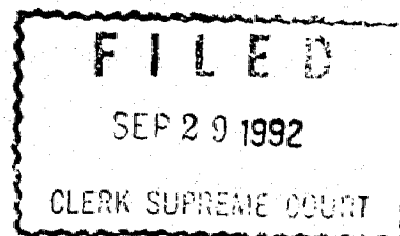
STATE OF IOWA ex rel. LEAH CHRISTEN LARA,

Appellee,

vs.

JAMES LARA,

Appellant.



Appeal from the Iowa District Court for Webster County,
Louie F. Beisser, Judge.

The father appeals a support order, challenging only
the amount of his support obligation. **AFFIRMED AS
MODIFIED.**

Peter J. Leehey of Trevino, Leehey & Schnurr,
Fort Dodge, for appellant.

Bonnie J. Campbell, Attorney General; John Parmeter,
Deputy Attorney General; Robert R. Huibregtse, Assistant
Attorney General; and Rhonda Fitchett, Assistant County
Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

OXBERGER, C.J.

This case concerns the question of the appropriate level of child support James Lara should pay for his child, Leah Christen Lara. Leah was born on June 21, 1989, and is the daughter of Stephanie Lundberg. James and Stephanie are not married, but apparently they cohabited at one time.

James filed a petition on December 21, 1989, seeking to be legally recognized as Leah's biological father. The parties stipulated to joint custody of Leah, with Stephanie having primary physical care. The parties agreed to a very liberal visitation schedule. In fact, James has so much visitation, Leah is in his care about fifth-four per cent of the time. The district court issued a decree incorporating the parties' stipulation.

James is employed by Roger's Tire Service in Fort Dodge, Iowa. His gross income in 1990 was \$15,153, and he had net income of \$974.61 per month. During the time period from September 1, 1990, through April 30, 1991, James voluntarily paid \$3,158 towards Leah's support.

Stephanie was employed part-time at Trinity Regional Hospital from August 1989 to August 1990. She earned approximately \$340 per month from her employment there. Stephanie voluntarily quit this job. She began to receive public assistance benefits (ADC) on September 1, 1990. From September 1, 1990, to May 31, 1991, Stephanie received \$3,022 from the Department of Human Services (DHS).

The Child Support Recovery Unit initiated an administrative proceeding pursuant to Iowa Code chapter 252C, to establish James's child support obligation. DHS filed an administrative order requiring James to pay \$242 per month in child support.

James sought a hearing in district court. He argued that because he had physical custody of Leah for about fifty per cent of the time, he should only be required to pay fifty per cent of the amount required by the child support guidelines. The district court determined there was no evidence in the record to show James paid more than fifty per cent of Leah's support. The court stated that because Stephanie had primary physical care of Leah, it presumed she was providing the majority of Leah's support.

Although Stephanie's ADC benefits may not be considered as income, based on her previous employment the district court found she had the ability to earn about \$340 per month. Stephanie's earning capacity was then included in the court's calculation of child support under the guidelines. The court determined James should pay child support of \$239.75 per month. James has appealed.

This case was heard in equity and our scope of review is de novo. See State ex rel. Blakeman v. Blakeman, 337 N.W.2d 199, 201 (Iowa 1983). A district court hearing under Iowa Code section 252C.4 is not considered judicial review of an agency action. Krause v. State ex rel. Iowa Department of Human Services, 426 N.W.2d 161, 165 (Iowa

1988). The statute provides for an original judicial determination of support as an alternative to agency action. Id. at 165-166.

Although the parties stipulated that Stephanie has physical care of Leah, because of the amount of time James actually has care of the child, in effect the parties have agreed to joint physical custody. Under the terms of the stipulation, James has physical care of Leah slightly more than fifty per cent of the time. Furthermore, during the time period from September 1, 1990, to April 30, 1991, James contributed \$3,158 for Leah's support, while Stephanie contributed, through her ADC benefits, somewhat less than \$3,022 for Leah's support. Therefore, at least during that time period, James contributed slightly more than fifty per cent of Leah's support.

The fact that a parent has responsibility for a child half of the time and contributes at least half of the child's support does not relieve the parent from further support. State ex rel. Shoemaker v. Fink, 432 N.W.2d 700, 701 (Iowa App. 1988). Both parents have an obligation to contribute to their child's support, not necessarily equally, but in accordance with their ability to pay. Iowa Department of Human Services ex rel. Greenshaw v. Stewart, 435 N.W.2d 749, 751 (Iowa App. 1988).

In a case involving split custody, where each parent has custody of one or more children, we determined the trial court must make a determination of child support

for each parent. In re Marriage of Hansen, 465 N.W.2d 906, 911 (Iowa App. 1990). In so doing, the trial court must apply the child support guidelines for each parent while assuming the other parent is the noncustodial parent. Id.

We believe that in situations involving joint physical custody the same approach as that used for split custody should apply. James's child support obligation under the guidelines has already been determined to be \$239.75 per month. We then apply the guidelines assuming Stephanie is the noncustodial parent and James is the custodial parent. As the district court found, Stephanie has the ability to earn \$340 per month. Stephanie's child support obligation would be \$67.66 per month. We conclude James should pay the difference between these two amounts, \$172.09, which we round off to \$172 per month.

We determine James should pay child support of \$172 per month for the benefit of Leah Lara. The decree of the district court is affirmed as modified.

Costs of this appeal are assessed to James.

AFFIRMED AS MODIFIED.