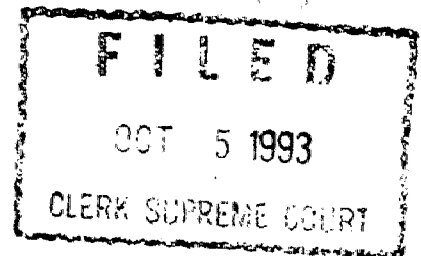


IN THE COURT OF APPEALS OF IOWA

No. 3-061 / 92-229

000421



VANESSA RENCH,
Appellant/Cross-Appellee,

vs.

KENNETH O. NOLAN,
Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Scott County,
Edward B. deSilva, Jr., Judge.

The petitioner appeals a district court's order
modifying the respondent's child support obligation.

AFFIRMED AS MODIFIED AND REMANDED.

Michael J. McCarthy of McCarthy & Lammers, Davenport,
for appellant.

Seymore M. Raben, Davenport, for appellee.

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

OXBERGER, C.J.

On July 15, 1987, Kenneth Nolan stipulated pursuant to chapter 252A of the Iowa Code that he is the father of Sarah Rensch, born on December 12, 1977, to Vanessa Rensch. Nolan agreed to pay \$30 per week child support to the department of human services. Vanessa was on ADC and was being represented by the child support recovery unit. The district court entered an order approving the stipulation.

On June 17, 1991, Vanessa filed an application for modification of child support. On September 18, 1991, Nolan filed an application for modification of visitation.

Vanessa and Sarah are currently living in Hannibal, Missouri. Vanessa is unmarried and has one other child living with her. Vanessa receives \$25 dollars per week child support for her other child. Vanessa is currently employed, earning approximately \$24,000 per year. She no longer receives ADC. Nolan lives in Iowa and is married. We are unable to accurately determine Kenneth's net monthly income.

On October 9, 1991, the district court entered its ruling on the petition for modification of support and visitation. The district court found it necessary to increase Nolan's child support obligation as a result of Sarah's increased age, the increased expenses in connection with raising Sarah, and inflation. The district court found, however, that it was not necessary under the circumstances of this case, to apply the child support

guidelines because it did not find a substantial change of circumstances. The district court ordered Nolan to pay Vanessa \$60 per week child support. The district court concluded that the issue of visitation could not be addressed in this action to modify child support. See Beneventi v. Beneventi, 185 N.W.2d 219, 224 (Iowa 1971).

Vanessa filed a rule 179(b) motion and Nolan filed a resistance. On January 7, 1992, the district court entered its ruling. The district court ordered Nolan to pay \$350 for Vanessa's attorney fees. In all other respects, the district court denied the rule 179(b) motion.

Vanessa has appealed the district court's refusal to apply the child support guidelines. Nolan has appealed the district court's refusal to consider his application to modify visitation.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). 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. P. 14(f)(7).

This modification petition was initiated pursuant to Iowa's Uniform Support of Dependents Law. See Iowa Code § 252A (1991). Determinations of support are within the

jurisdiction of the court under an action filed pursuant to Iowa Code section 252A. Id. A substantial change of circumstances not within the contemplation of the trial court and the parties when the original decree was entered enables modification of a 252A decree. State ex rel. Evers v. Berridge, 447 N.W.2d 562, 563 (Iowa App. 1989). Although the district court modified the child support order, it concluded there had not been a substantial change in circumstances. However, unlike the district court, we find numerous factors to support finding a substantial change in circumstances.

Iowa Code section 252A (1991) does not expressly delineate those factors the court shall consider when determining whether there has been a substantial change in circumstances. We rely on those factors set forth in Iowa Code section 598.21(8) (1991) for guidance. Considerations applicable to this case, which are also enumerated in section 598.21(8), include changes in employment, earning capacity, and income; changes in residence; remarriage; and changes in the needs of the child. We conclude a substantial change in circumstances has occurred and modification is warranted.

According to the uniform child support guidelines prescribed by the supreme court, there shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines is the correct amount of child support to be awarded. The

presumption has not been rebutted in this case. The uniform child support guidelines must be utilized in determining the amount of child support to be paid by Kenneth.

We are unable to ascertain the parties' respective net monthly incomes from the record and are unable to determine the amount of child support to be paid. We remand this action for a determination of child support based on the application of the uniform child support guidelines.

Kenneth also requests visitation. However, we are also unable to award visitation. We lack jurisdiction, as did the district court, under Iowa Code section 252A to grant visitation.

This action is affirmed as modified and remanded. We do not retain jurisdiction of this appeal.

AFFIRMED AS MODIFIED AND REMANDED.