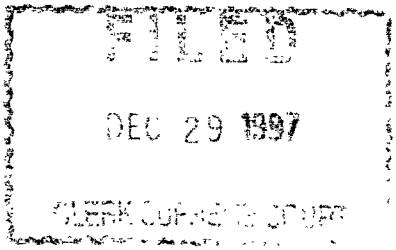
IN THE COURT OF APPEALS OF IOWA

No. 7-583 / 96-1917
Filed December 29, 1997



STATE OF IOWA, ex rel. JASON R. LASS, a Minor Child, by Mary Jane Lass, His Next Friend,
Appellant,

vs.

DAVID B. KEEL,
Appellee.

Appeal from the Iowa District Court for Boone County, Timothy J. Finn, Judge.

Mary Lass appeals from a modification of David Keel's child support obligation regarding the parties' child Jason Lass. **AFFIRMED AS MODIFIED.**

Dorothy L. Dakin of Dakin Law Office, Boone, for appellant.

Steven K. Nalean of Nalean & Nalean, Boone, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

STREIT, J.

In a 1993 action to establish paternity and child support, the court found David Keel to be the father of Jason Lass. In setting David's child support obligation, the court applied the guidelines, then found justification to deviate from the guidelines because David had married and adopted his wife's child before he had knowledge he was Jason's father. In 1996, Mary Jane Lass filed a petition to modify, alleging David's income had increased substantially, Jason's financial needs had increased, and the amount calculated under current guidelines would vary by more than ten percent from the existing amount. The court found David's increased income to be a substantial change in circumstances requiring an increase in support for Jason. In calculating David's support obligation, the court found David's overtime to be speculative and uncertain. It also found deviation from the guidelines to be appropriate for the same reasons as the 1993 order and set monthly child support at $440 instead of the guidelines amount of $584. In addition, the court awarded the tax exemption for Jason to David.

Mary Ann appeals, arguing the court should have included David's overtime, should not have deviated from the guidelines, and should not have given David the tax exemption. We affirm as modified on appeal by memorandum opinion pursuant to Iowa Supreme Court rule 9.

The child support guidelines established by the supreme court are to be strictly applied unless the court makes a specific finding that the scheduled amount would be

"unjust or inappropriate" under the criteria established by the guidelines. Iowa Code § 598.21(4)(a) (1991); *State ex rel Reaves by Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994). Only by faithful adherence to the schedule will the "inadequate, inconsistent, and ineffective" practices of the past be remedied. *In re Marriage of Fox*, 559 N.W.2d 26, 29 (Iowa 1997); *In re Marriage of Powell*, 474 N.W.2d 531, 533 (Iowa 1991). Overtime wages are within the definition of gross income to be used in calculating net monthly income for child support purposes. *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992). When income is subject to fluctuation, an average income over a reasonable period of time should be used. *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa App. 1996).

We find the district court should have included David's overtime in calculating his net monthly income for child support purposes. We also find circumstances with David's new family have changed and deviation from the child support guidelines no longer is justified. Concerning the tax exemption for Jason, state courts have the power to allocate tax exemptions in family law cases differently than the federal tax code. *In re Marriage of Rolek*, 555 N.W.2d 675, 678-79 (Iowa 1996). Depending on the circumstances, we evaluate which allocation would benefit the child more and whether a parent can take full advantage of the exemption. *Id.* at 679. Either parent would be able to take full advantage of the exemption in this case. We find Jason's best interests would be served by David taking the exemption, providing he is fully current on all support obligations at the end of the calendar year.

David's average income for 1993 through 1995 was $45,482. Mary Ann's income was $27,846. With David taking the tax exemption, David's net monthly income is $2907 and Mary Ann's is $1781. The guideline percentage is 20.5%. We order David to pay monthly child support of $596.

We also order David to pay $500 appellate attorney fees to Mary Ann.

AFFIRMED AS MODIFIED.