IN THE COURT OF APPEALS OF IOWA

No. 4-191 / 93-708

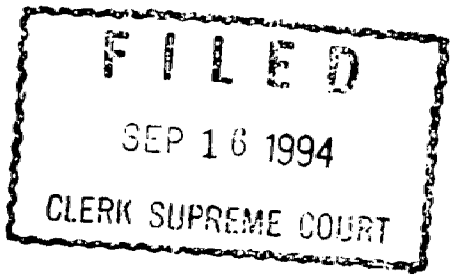
IN RE THE MARRIAGE OF DAVID GLEN KEMP AND PAMELA KAY KEMP

Upon the Petition of
DAVID GLEN KEMP,

Appellant,

And Concerning
PAMELA KAY KEMP,

Appellee.



Appeal from the Iowa District Court for Washington County, Robert Bates, Judge.

David Kemp appeals from the visitation and child support provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Patricia C. Kamath, Iowa City, for appellant.

No appearance by appellee.

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

CADY, J.

This is an appeal by a custodial parent from a decree for dissolution of marriage which failed to impose a child support obligation and ordered the custodial parent to share in the transportation costs associated with visitation. We modify the district court's decree on our de novo review.

David and Pamela Kemp were married in 1989. They have one child, Christina. She was born July 17, 1990. Pamela has three children from a prior marriage. Pamela is the custodial parent of one of the children, Danny, from the prior marriage and her husband is the custodial parent of the two daughters.

David and Pamela separated in February 1992, when Pamela moved from the family home near Kalona, Iowa to Kewanee, Illinois, a distance of 128 miles. Christina remained with David, and Pamela maintained custody of Danny, who was three years old at the time of trial.

David was thirty-seven years of age at the time of trial, and Pamela was twenty-four year old. David is self-employed as a carpenter and earns around $16,000 a year. Pamela is a first year student at a junior college, pursuing an associate arts degree in anthropology. She receives good grades and hopes to pursue an advanced degree. Pamela is not employed. She worked at several restaurants as a teen ager. Her mother cares for her son while she attends school. Pamela resides in low-income

housing and receives monthly ADC of $259, together with $171 in food stamps. She receives a Pell grant to finance her college education. Her health care needs are covered by Title XIX. Pamela is in good health. Her son has an attention deficit disorder. Pamela has not looked for employment.

David and Pamela stipulated to the division of their property and agreed to a joint custody arrangement, with David as the primary caretaker of Christina. The issues at trial were confined to child support and visitation.

The district court awarded Pamela visitation, which included summer visitation of one week in June and two weeks in July of 1993, three weeks in July, 1994, and the full month of July in each following year. The court awarded no child support, and directed the parties to share the transportation expenses associated with visitation.

David appeals. He contends the district court erred by not awarding him child support. Even if Pamela is relieved of this duty, David asserts she should pay the full costs of traveling expenses for visitation considering Pamela voluntarily moved away. David also contends a yearly review of child support is the most effective method for him to know when Pamela completes school and starts work. Finally, David claims Christina has experienced fears of being separated from him following week-long visits with Pamela, and he wants weekend visitation during Pamela's summer visitation.

I. Scope of Review

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Child Support

It is a fundamental axiom that parents have a legal obligation to support their children in accordance with their ability to pay. In re Marriage of Reedholm, 497 N.W.2d 477, 479 (Iowa App. 1993). The ability to pay is defined by applying the uniform child support guidelines. In re Marriage of Van Zee, 488 N.W.2d 721, 723 (Iowa 1992). The guidelines carry a rebuttable presumption that the amount computed is correct. In re Marriage of Van Ryswyk, 492 N.W.2d 728, 731 (Iowa App. 1992). In some situations, however, the guidelines leave the amount of child support in the discretion of the court. One situation, applicable to this case, is where the net monthly income of the noncustodial parent is $500 or less.

The discretion to be exercised by the court under the guidelines is not without limitation. The guidelines specify that some amount of child support is required. This requirement recognizes the strong obligation every parent has to support his or her children.

The factors used by courts to determine child support prior to the adoption of the guidelines remain instructional when the guidelines require judicial discretion. In re Marriage of Powell, 474 N.W.2d 531, 534

(Iowa 1991). The financial resources of both parents and the needs of the child are two paramount factors. Moreover, in considering the financial resources of a parent, it may be appropriate to consider the earning capacity of a parent, not just current earnings. See In re Marriage of Bonnette, 492 N.W.2d 717, 722 (Iowa App. 1992). Earning capacity embraces such factors as employment history, present earnings, hours worked, physical health, and reasons for the inability or failure to regularly earn at least minimum wage. See Iowa Dept. of Human Serv. v. Gable, 474 N.W.2d 581, 583 (Iowa App. 1991).

In this case, we believe the trial court should have imposed a specific monthly child support obligation. It was improper to consider transportation costs as child support. We recognize Pamela has limited financial resources at this time and is actively pursuing a college education that should strengthen her future earning potential. Our decision should not hinder her efforts to improve her future. She also has the important responsibility of raising her young son. Pamela, however, cannot take time off from parenting Christina while pursuing her college education. Christina needs are ongoing, and Pamela's career plans must consider her obligation of support. Pamela has the ability to obtain part-time employment while completing her education.

From our de novo review of the record, we modify the decree to award monthly child support of $75. We remand the case to the trial court to enter an order establishing the specific terms of payment. We decline to establish an annual review as requested by David. He may petition to modify upon a change of circumstances. See Iowa Code sections 598.21 (8) and (9).

III. Visitation

Our governing consideration in establishing visitation rights is the best interests of the child, and generally, liberal visitation is in a child's best interest. In re Marriage of Stepp, 485 N.W.2d 846, 849 (Iowa App. 1992). While a child's age is a factor to consider in setting visitation periods, age alone is not an appropriate consideration for limiting a parent's summer visitation. In re Marriage of Drury, 475 N.W.2d 668, 671 (Iowa App. 1991). We are alert to the evidence in the record that Christina experienced some difficulties adjusting following weekly visitation periods with Pamela. We believe, however, this concern was adequately addressed by the trial court in gradually implementing the summer visitation schedule.

We decline to modify the requirement that David share in the transportation costs associated with visitation. Both parents have an interest in facilitating visitation. Sharing the costs of transportation is one method to assist and promote visitation. **AFFIRMED AS MODIFIED AND REMANDED.**