

IN THE COURT OF APPEALS OF IOWA

No. 4-203 / 93-1006

IN RE THE MARRIAGE OF DE ANN LEE ROBINSON AND WILLIAM LEE ROBINSON

Upon the Petition of
DE ANN LEE ROBINSON,

Appellee,

And Concerning
WILLIAM LEE ROBINSON,

Appellant.

Appeal from the Iowa District Court for Franklin County, John Stuart Scoles, Judge.

William Robinson appeals a modification of the parties' dissolution decree. **AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.**

Jay M. Shriver of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellant.

L. Don Snow of Mershon, Snow & Knock, Cedar Falls, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

De Ann and William Robinson's marriage was dissolved in 1986. At that time the district court awarded primary care of the parties' children, Brent, born May 16, 1980, and Erin, born May 19, 1983, to De Ann. Among other things, William was ordered to pay $800 per month in child support.

In July 1992 De Ann filed a petition to modify the parties' dissolution decree, requesting an increase in child support based on the reduction in her income and a substantial increase in William's income. William also filed a petition for modification in December 1992, requesting a reduction in child support and an order allowing him to claim both children as dependent exemptions for income tax purposes.

Following a trial, the district court found De Ann was no longer earning a full-time teacher's salary of $22,000 per year and accepted her stipulation to impute a net monthly income of over $1000 for child support purposes. The court found William's position as vice president of special accounts at the Federal Land Bank in Mason City had changed to president of Liberty Bank, improving his salary from $54,000 to $73,000. The court acknowledged William was also involved in farming, farm management, and real estate sales, and further acknowledged William had consistently incurred a loss of approximately $30,000 annually in his farming business since 1987. The court decided although William had a right to engage in an

activity which loses money for him, it was not going to alleviate William's full obligation to contribute to his children's support. The court did not consider these losses in calculating William's income for support purposes. The court also determined it would be unfair to include certain profits William had made in his other businesses in the calculation of his income. Therefore, based solely on his salary from the bank, William's child support obligation was increased to $1223 per month. Among other things, the district court also permitted William to claim one child as an exemption for tax purposes. William filed a rule 179(b) motion; however, the motion was denied.

William appeals. He contends the district court should have considered his income and losses from self-employment in determining his child support obligation. William further contends if the district court had properly calculated his income it would have been apparent there has been a substantial change in circumstances justifying a reduction in child support to $611 per month. Finally, William asserts the district court erred in failing to permit him to claim both children as exemptions for tax purposes.

On October 25, 1993, William filed a motion in the supreme court for a limited remand. His employment at the bank had been terminated, and he wanted the district court to modify the decree to reflect this decrease in income. He wanted to continue this appeal for a review of the

district court's method of computation of his income for child support purposes. The motion was granted by our supreme court on November 9, 1993.

Dissolution actions such as this one are tried in equity, and our standard of review is de novo. Iowa R. App. P. 4. This court has a duty to examine the entire record and adjudicate anew, rights on issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The primary issue on appeal is whether the calculation of a noncustodial parent's income, for purposes of determining child support obligations, should include regular and consistent losses from farming and other activity, where the noncustodial parent also has substantial income as a salaried employee. The parties were unable to cite any cases directly on point. There are, however, no hard and fast rules governing the economic provisions in a dissolution action; each decision depends upon the unique circumstances and facts relevant to each issue. In re Marriage of Gaer, 476 N.W.2d 324, 326 (Iowa 1991) (citing In re Marriage of Wiedemann, 402 N.W.2d 744, 747 (Iowa 1987)). Prior cases have little precedential value, and we must, therefore, rest our decision primarily on the particular circumstances of the parties before us. Id. (quoting In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983)).

The district court concluded, given the facts and circumstances of this case, William's child support obligation should be based solely on his income as a full-time bank president. The court declined to consider certain other elements of William's income and losses including (1) income from his farm management business, (2) interest income from a real estate contract, (3) losses from the rental of his duplex and, most significantly, (4) losses incurred from his farming activity.

We first consider William's contention the district court erred in refusing to consider his losses from farming for purposes of determining child support obligations. From 1987 to 1992 William's tax returns show total expenses from farming well in excess of gross income, resulting in an average annual loss of approximately $30,000. William argues his farm is a business operating for profit and the trial court should have subtracted his farm losses from his other earnings before arriving at net monthly income under the child support guidelines.

In Gaer, the Supreme Court of Iowa recognized "some consideration must be given to business expenses reasonably necessary to maintain a business or occupation." In re Marriage of Gaer, 476 N.W.2d at 329. After considering these matters, the court, where warranted, should adjust gross income before applying the guidelines Id. The inverse implication of Gaer, however, is we are not required to give any consideration to expenses incurred in

the operation of a farm which is neither a business nor an occupation, but is instead a hobby or a tax shelter.

In the instant action, we find William does not engage in farming to sustain himself or his family. His regular occupation is that of a full-time bank president, and farming, for him, is an avocation pursued outside of his duties at the bank. Furthermore, William grew up on a farm and continues his farming activities by renting land. Upon review of the expenses listed in Schedule F of William's tax returns, from 1987-1992, we find an average annual farm rental expense of approximately $49,000. This, in conjunction with other expenses, has resulted in an annual net loss from farming, which William has been able to deduct from his other income in order to reduce his tax burden. Based upon these facts, we conclude William's farming operation is more in the nature of a hobby or a tax shelter than a business. We will not consider William's losses from farming for purposes of determining his child support obligations.

The district court, in its "Order for Modification of Decree," stated:

> It is unclear to the court why William continues in an activity which consistently results in a loss of approximately $30,000 annually . . . . While William certainly has the right to engage in farming if he elects to do so, the court does not believe that he may avoid his full obligation to contribute to his children's support, by consistently claiming losses from that activity.

We determine the district court correctly disregarded

Williams losses from farming for purposes of determining child support obligations.

The remaining elements of William's income and loss, however, should be included in calculating his net monthly income under the guidelines. These elements are (1) income from his farm management business, (2) interest income from a real estate contract, and (3) losses from the rental of his duplex.

William next argues the trial court erred in determining there had been a substantial change in circumstances warranting an increase in child support.

It is clear upon a showing of a change of circumstances the court may modify the child support amount. In re Marriage of Dawson, 467 N.W.2d 271 (Iowa 1991). The trial court determined William's income was increased due to his new position as president of Liberty Bank and refused to consider his farming losses which William contends created a decrease in income. We have concluded that position to be correct. Our review of the record indicates a substantial change in income did exist, and we affirm on this issue. We note because William is paying substantial child support he should be allowed to claim both children as exemptions. The decree is modified accordingly.

We remand to the trial court for calculation of the proper child support to be paid by William, with directions to include all of his income, including income from his farm appraisal business. The loss from his farming is not

to be considered. Losses sustained from the rental of his duplex shall be included. We do not retain jurisdiction. Costs of this appeal are taxed to William.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.

Habhab, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. The issue before us is what income figure should be used to compute the child support obligation of a salaried father who also has other occupations and investments. The trial court did not adopt income as reported for income tax purposes but elected to disregard the income and losses on the other jobs. The majority has correctly determined the income on investments and other jobs that have made a profit should be included in determining income. To this point, I agree with the majority. I depart from their decision; however, that while including profits from other than his salary, they exclude losses from farming.

William works as a bank president, farms, and has rental and appraisal businesses. These are businesses he had during the marriage. His basic contention is his income for purposes of applying the child support guidelines should be his income as defined by the Internal Revenue Code less applicable deductions for federal and state income tax and FICA. I agree with this contention in total.

The majority; however, has elected to recalculate his income for child support purposes. The majority has decided William's wage income and the income from all businesses that show a profit should be included for child support purposes and he should not be allowed to claim a deduction for the business that shows a loss, namely farming.

Child support guidelines have come in response to a federal mandate. In 1988 Congress, in the Family Support Act,[1] required the states to enact guidelines to establish presumptions of correct child support in a given case. The guidelines came as a response to congressional concern about inadequacy of noncustodial parental support and lack of consistency and efficiency in establishing child support awards.

The states have been left free to develop their own guidelines and discretion in choosing the method of formulating their guidelines.[2] It was contemplated the guidelines would be fair in their particulars, as well as

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1. On October 13, 1988, the Family Support Act of 1988 (PL 100-485) was signed into law. This Act replaced the existing Aid to Families With Dependent Children (AFDC) Program with a new Family Support Program and Significantly amends the Child Support Enforcement Program (Title IV, Part D of the Social Security Act). The intent of the Act is to: 1) reduce long-term welfare dependency by providing education, training, and employment to needy parents and 2) improve child support enforcement and establishment services available to children.

The Act has impact on issues of:

1) child support guidelines and periodic review for modification of orders;
2) immediate income withholding;
3) establishment of paternity;
4) visitation/custody demonstration projects; and
5) requirement for automated tracking and monitoring system.

See generally, 42 U.S.C.A. §§ 657, 667.

2. For a discussion of the history of congressional action on child support guidelines, see Fitzgerald v. Fitzgerald, 556 A.2d 719, 723-25 (D.C. App. 1989).

promote equity through uniformity.[3]

Before applying the guidelines there needs to be a determination of the net monthly income of the custodial and noncustodial parent.[4] See In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991) (court must determine the parents' current income from most reliable evidence presented); In re Marriage of Lalone, 469 N.W.2d 695, 696 (Iowa 1991) (application of child support guideline chart first involves determination of net monthly income of each parent); In re Marriage of Miller, 475 N.W.2d 675, 678 (Iowa App. 1991) (first step in using the child support guidelines is to arrive at "net monthly income").

This is one of a series of cases that have come before the Iowa appellate courts seeking further definition of "net monthly income" as used in the guidelines. See In re Marriage of Gaer, 476 N.W.2d 324, 326-30 (Iowa 1991) (in determining income available for child support, self-employed truck driver would be allowed deduction for straight line method of depreciation of truck); Powell, 474

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3. Fitzgerald, at 724.

4. 1. The guidelines are based on a determination of "net monthly income" which is gross montly income less deductions for:

   a. Federal Income Tax;
   b. State Income Tax;
   c. Social Security Deductions;
   d. Mandatory Pension Deductions;
   e. Union Dues;
   f. Dependent Health Insurance Coverage;
   g. Individual Health/Hospitalization Coverage or Medical Expense Deductions not to exceed $25 a month.

N.W.2d at 533-34 (court may determine current monthly income based upon income prior to temporary unemployment); Lalone, 469 N.W.2d at 697 ("net monthly income" excluded alimony paid); State ex rel. Dep't Human Serv. v. Burt, 469 N.W.2d 669, 671 (Iowa 1991) (amount father ordered to pay to be applied toward his accrued obligation for public assistance advanced in past is not deductible from gross income in determining net income under child support guidelines); In re Marriage of Mayfield, 477 N.W.2d 859, 861-62 (Iowa App. 1991) ("net income" was properly found to equal average of last 2 years of taxable income); Miller, 475 N.W.2d at 678-79 ("net monthly income" did not exclude alimony paid); In re Marriage of Jennings, 455 N.W.2d 284, 287-88 (Iowa App. 1990) (net monthly income under the guidelines means gross monthly income less specifically enumerated deductions).

The definition of income as used in the guidelines is most readily adaptable to the parent employed at a set monthly wage. It is more difficult when used in determining the income of a person who has income from self-employment. See In re Marriage of Cossel, 487 N.W.2d 679, 682 (Iowa App. 1992). And may, when dealing with self-employment income, require an average of several years. Id.

It seems apparent, in nearly all cases, we should look to what is currently referred to as "total taxable" income on the federal 1040 and as "net income" on the IA 1040. Cossel, 487 N.W.2d at 683. And, when a person has fluctuating income, average it over a period of several years so as to fairly spread income fluctuations. See Cossel, 487 N.W.2d at 682.

When we attempt to dissect income and fail to use a uniform definition of income, we are not following the federal mandate for consistency, uniformity, and efficiency. Income must be reported to the federal and state government in a particular way, and there are serious penalties for not following these reporting requirements. The result is what is defined on the federal tax return as "adjusted gross income." There is a degree of fairness in the system and these figures are most easily ascertained.

If we are going to have uniformity in the guidelines, we need a uniform definition of income for child support purposes. We are not doing a service to the bench, or bar, or parents, or children and are only asking for more litigation when we refuse to use adjusted gross income as defined for federal tax purposes and decide, instead, that judges are more capable of deciding what is income by their own definition.

If the taxing authorities are willing to recognize a loss on a business, why should we determine otherwise? Do we not consider farming a legitimate business because the

farming operation loses money. Also, as here, while the farming was at a loss, the fact William has farming background certainly relates to his qualifications for the other jobs which are directly related to farming.

William is supporting his family. He has the same mode of operation he had when the family was together. If the family had stayed together, they would have had the risks and benefits from his farming.

I would compute William's child support obligation on his adjusted gross income less deductions for:

(1) Federal Income Tax;

(2) State Income Tax;

(3) Social Security Deductions;

(4) Mandatory Pension Deductions;

(5) Union Dues;

(6) Dependent Health Insurance Coverage;

(7) Individual Health/Hospitalization Coverage or Medical Expense Deductions not to exceed $25 a month.