

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 28 1988

CLERK SUPREME COURT

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DONNA REGLEIN,)

Petitioner-Appellee,)

vs.)

IOWA DEPARTMENT OF HUMAN SERVICES)
CHILD SUPPORT RECOVERY UNIT,

8-246
87-1421

Respondent-Appellant.)

Appeal from the Iowa District Court for Carroll County
(No. 29196) - Paul E. Hellwege, Senior Judge.

Iowa Department of Human Services appeals an order finding petitioner has no obligation to contribute to the support of two of her children who are in their father's care. **MODIFIED.**

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Mark Haverkamp, Assistant Attorney General; and Gail A. Sheridan, Assistant County Attorney, for respondent-appellant.

William G. Polking, of Polking Law Officer, Carroll, for plaintiff-appellee.

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

SACKETT, J.

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Respondent-Appellant Iowa Department of Human Services Child Support Recovery Unit appeals a trial court order determining the Department of Human Services acted arbitrarily in establishing child support under Iowa Code section 252C.4, and finding Petitioner-Appellee Donna Reglein had no obligation to contribute to the support of her children. We modify.

Donna Reglein and her former husband had two children. The children are in her former husband's custody the majority of the time. He is receiving aid to dependent children. There were no prior orders requiring Donna to contribute to the childrens' support.

In December 1985 the Department of Human Services notified Donna she had past and current obligations to support her children. The department sought to establish a support amount consistent with her ability to pay and the needs of the children pursuant to Iowa Code section 252C.2(2) (1985). Donna requested a negotiation conference. A conference was held and the department determined Donna should pay support of \$40 per month and an additional \$10 per month toward back support. Donna appealed to the district court. The district court determined the department had acted arbitrarily in setting the award and determined Donna was unable to contribute to the support of her two children. The department on appeal

contends the trial court erred in determining they acted arbitrarily. We find it unnecessary to address this issue.

In Krause v. State of Iowa ex rel. Iowa Dep't of Human Servs., (slip op 7-20-88 ____ N.W.2d ____ (1988)) the Iowa court determined a hearing in district court under section 252C.4(1) is an original hearing. Because the district court hears the matter as an original matter we need only review the facts de novo to determine whether we agree with the trial court's determination Donna has no obligation to contribute to the support of her children.

The two children are in the custody of their father during the school year except for weekends. They spend the majority of the summer months with their mother. Their father is unable to support the children and he receives aid to dependent children. Both parents have an obligation to contribute to their childrens' support not necessarily equally but in accordance with their ability to pay. In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984). In assessing Donna's responsibility for support we consider but are not bound by the guidelines established by Iowa Code section 252C.10.

Donna chooses only to work part-time. She earns about \$227 per month. She and her current husband have two children. They have a joint net worth, including an equity in their personal residence, of nearly \$30,000. Her current husband has wages and farm income. He had income of over

\$20,000 in 1982 and 1983.. He suffered a business loss in 1984 of approximately \$17,000, but the family income included \$10,816 in wages and \$9,923 in net farm income.

We consider the financial resources of Donna's husband only as they relate to her overall financial condition and his ability to contribute to the support of their two children. See Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974); Mears v. Mears, 213 N.W.2d 511, 514 (Iowa 1973); In re Marriage of Mueller, 400 N.W.2d 86, 88-89 (Iowa App. 1986). Child support cannot be based solely on a percentage of income but can be determined only after applying a series of factors. See In re Marriage of Anderson, 400 N.W.2d 84, 85 (Iowa App. 1986). We apply these factors. Id.

We determine Donna shall pay child support of \$40 per month and an additional \$10 per month toward back support.

Costs on appeal are taxed to appellee.

MODIFIED.