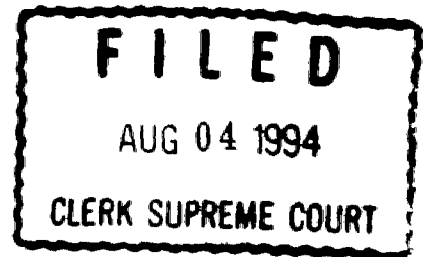


IN THE COURT OF APPEALS OF IOWA

No. 3-591 / 92-1908



IN RE THE MARRIAGE OF JEANNIE KAY GAFFNEY AND
JAMES MICHAEL GAFFNEY

Upon the Petition of
JEANNIE KAY GAFFNEY,

Appellant,

And Concerning
JAMES MICHAEL GAFFNEY,

Appellee.

Appeal from the Iowa District Court for Scott County,
David Sohr, Judge.

Jeannie Gaffney appeals the modification of the
parties' dissolution decree. **AFFIRMED IN PART, REVERSED IN
PART AND REMANDED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander
and Preacher, Bettendorf, for appellant.

Linda A. Whittaker of Stanley, Lande & Hunter, P.C.,
Muscatine, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink,
JJ.

HUITINK, J.

Jeannie Gaffney appeals the modification of the parties' dissolution decree. We affirm in part, reverse in part and remand with directions.

Jeannie and James Gaffney were divorced in May 1986. Jeannie was awarded primary care of the parties' children, Erin, born in 1981, and Megan, born in 1984. James was awarded reasonable visitation and was ordered to pay \$280 child support per month, per child. The decree stated:

This amount represents a minimum amount, and shall be increased annually on the first day of May each year so that the support payments for each child shall be the amount stated previously or 15% of [James's] net disposable income (total earnings less health insurance, F.I.C.A., federal withholding, state withholding) whichever is greater. [James] shall provide [Jeannie] with his tax return prior to May 1 of each year.

Jeannie filed for modification of child support in November 1991. She subsequently filed an application for an order to show cause asking the court to hold James in contempt of court for failing to produce his tax return and to pay child support in accordance with the decree.

The parties stipulated to a modification of future child support. The district court found James to be \$3,639.64 in arrears for child support including \$441.51 interest. Jeannie's petition for contempt was dismissed.

Our review in this equity action is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when determining the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14 (f)(7).

Jeannie contends the district court erred in its interpretation of the phrase "total earnings" in the original decree. She argues James's overtime pay should be included in the calculation of James's total earnings. We agree.

At the time the decree was entered in 1986, overtime wages were included in child support determinations to the extent those overtime wages were expected. See In re Marriage of Heinemann, 309 N.W.2d 151, 152 (Iowa App. 1981). James had been employed by the FBI since 1983. At the time of his hiring he was informed there would be many hours of overtime. He testified he has worked a number of hours over a forty-hour work week since that time. He also testified he expects the long hours to continue. It is clear that overtime was expected.

The record indicates the original court knew of the overtime and contemplated those wages be included within the term "total earnings." The district court is reversed on this issue.

Jeannie also contends other forms of compensation which James received, such as reimbursements for moving expenses and cost of living adjustments, were also included in "total earnings" by the original court. We disagree.

James did not perform any work or render any services to receive this compensation. These forms of compensation are clearly unearned income and would not have been contemplated by the original court as part of James's "total earnings." The district court is affirmed on this issue.

We are dismayed that we are unable to determine James's overtime or his net income from the record. It is clear James did not provide sufficient information to the trial court to enable it to determine accurately his disposable income. We are further dismayed that the figures provided by James were accepted by the trial court without question. Simply put, it is impossible to figure the correct amount of child support owed with the sparse information in the record.

We therefore remand for a specific determination of James's total earnings and net disposable income. In order for the district court to calculate these figures, we order James and his attorney to provide the following specific information to the court. First, James shall submit a copy of his 1986 Federal Income Tax return to the court. If he cannot locate his return, he shall obtain a copy of his 1986 W-2 from his employer and submit it instead. Second, he is also ordered to document how much is withheld for (1) his Civil Service Retirement (CSRS) and (2) his health insurance and who is covered by the insurance. The record does not clearly indicate which deductions James receives as a federal employee. We order James to furnish this information to the court so it can determine whether he receives a FICA deduction or a partial FICA deduction plus the CSRS deduction. Finally, James must disclose the other nonearned income he received. This shall include figures for rent, cost of living adjustments, and moving and travel expenses.

We also remand for a determination of the interest actually owed once the district court determines the correct amount of support. Interest on child support shall not accrue until a payment is delinquent.

The district court should not be discouraged from using its inherent authority to require the parties to be complete in their submissions to the court. Anything less will result in a substantial injustice to the parties' children. We now turn to the remaining issues.

Jeannie contends the trial court erred in finding James was not in contempt of court. Our de novo review leads us to concur with the trial court, and we affirm on this issue.

Finally, Jeannie requests attorney fees and costs on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). James is ordered to pay \$750 toward Jeannie's attorney fees. Costs of this appeal are assessed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.