IN THE COURT OF APPEALS OF IOWA

No. 8-580 / 98-0010
Filed March 31, 1999

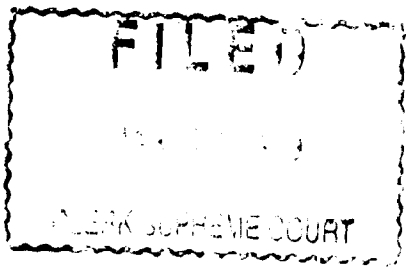
IN RE THE MARRIAGE OF RANDY KNICKERBOCKER AND VERNA LEE KNICKERBOCKER

Upon the Petition of
RANDY KNICKERBOCKER,

Petitioner-Appellant/Cross-Appellee,

And Concerning
VERNA LEE KNICKERBOCKER,

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge.

Petitioner appeals and respondent cross-appeals from the child support provisions of the dissolution decree. **AFFIRMED AS MODIFIED.**

James T. Peters, Independence, for appellant.

R. L. Van Veldhuizen, Oelwein, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

SACKETT, C.J.

Petitioner-appellant Randy Knickerbocker appeals the child support provision of the parties' dissolution decree. He claims the district court did not correctly figure his net monthly income as defined for purposes of applying the child support guidelines. He contends his child support obligation set by the district court should be reduced. Respondent-appellee/cross-appellant Verna Knickerbocker claims Randy's net monthly income for the purpose of applying the child support guidelines is higher than that determined by the district court and his child support obligation should be increased. She also contends the child support should have been ordered paid retroactively to the date the dissolution petition was served. We affirm as modified.

Randy and Verna were married in 1977. They have one minor child, Rachel, who was born in 1983. During the marriage, Randy farmed. His farm income varies from year to year. Verna was employed as a media aide by the Starmont Community School District. She has an annual income of about $5800.

Randy filed a petition for dissolution of the marriage in July 1996. The parties stipulated Verna would have primary physical care of Rachel, and Randy would be awarded the farm and farm equipment in exchange for him paying Verna a property settlement of $85,000 -- $30,000 to be paid before January 15, 1998, and $55,000 amortized over thirty years; interest was to accrue on the unpaid balance at six percent and the entire balance was to be paid ten years from the date of the dissolution.

Randy's obligation to Verna was secured by a lien on the farm and farm equipment. The dissolution decree incorporated the parties' stipulation.

The district court was asked to determine Randy's child support obligation. The district court found Randy's farm income to be $38,951 annually, and computed Randy's net monthly income for child support purposes to be $2325. The district court, considering Verna's wages and interest on the property settlement, determined Verna's annual income to be $9096. The district court found her net monthly income as defined by the child support guidelines to be $822. Applying the child support guidelines, the district court ordered Randy to pay child support of $521 a month.

Randy filed a motion pursuant to Iowa Rule of Civil Procedure 179(b) asking the district court to reconsider its computation of his net monthly income. The district court denied the motion. Randy appealed and Verna cross-appealed the child support provision of the parties' dissolution decree.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger,* 507 N.W.2d 733, 735 (Iowa App. 1993). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Randy contends the district court did not correctly determine his income. Randy is a grain and livestock farmer. The parties' 1993, 1994, 1995, and 1996

income tax returns are in evidence and show a substantial variation in Randy's annual income from farming.

Frequently recognizing variables in farm income, we have not focused on one year's income but have averaged income of a self-employed full-time farmer over several years. *See In re Marriage of Cossel*, 487 N.W.2d 679 (Iowa App. 1992), where we said:

> To establish a monthly income for a self-employed person or one who has fluctuating monthly income, it generally is best to use an average of income from a period that accurately reflects the fluctuations in income. A farmer produces commodities that fluctuate in value. Production may vary because of weather conditions. Farm programs have a substantial impact on a farmer's net income. These factors generally require a farmer's net monthly income to be determined from an average of twenty-four to thirty-six months' income. The fact that a noncustodial parent is a farmer does not justify departure from the guidelines. There is no basis to not apply guidelines to self-employed persons and to apply guidelines to persons employed by others.

Id. at 681; *see also In re Marriage of Robbins*, 510 N.W.2d 844, 846 (Iowa 1994); *In re Marriage of Worthington*, 504 N.W.2d 147, 151 (Iowa App. 1993). The district court incorrectly exclusively used Randy's 1996 net farm profits after changing the deduction for farm machinery he had elected to expense to straight-line depreciation.

Randy contends we should average his income over a four-year period after re-allocating expense deductions taken for depreciable items to the depreciation schedule and computing a deduction based on straight-line depreciation. He advances, and his tax returns show, based on a four-year average with depreciable items being taken under straight-line depreciation, his average farm income for the

four-year period to be $14,714. We agree with Randy it was not fair to establish his child support obligation using only the highest of his annual earnings as a farmer reporting income for tax purposes on the cash basis. His farm income, rather, should be averaged over a reasonable period. *See Cossel*, 487 N.W.2d at 681.

Before computing Randy's income, we need to address Verna's challenge to allowing Randy to deduct straight-line depreciation on property used in farming. Verna advances the child support guidelines do not provide for a depreciation deduction, and depreciation is merely a book figure and does not involve a cash expenditure. She argues about class life established by the Internal Revenue Code and suggests we should consider each item separately. She also advances the fact Randy may use the expense generated to pay off principal on the depreciable assets is of no consequence because his equity in the assets increases as a result of the payment.

This is not the first time depreciation taken by a self-employed person has been an issue in determining the net income for the purpose of applying the child support guidelines. *See In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991); *Worthington*, 504 N.W.2d at 151-52; *Cossel*, 487 N.W.2d at 682-83. Prior decisions have paved the way for disallowing a deduction for accelerated depreciation or the taking as an expense in one calendar year the entire cost of a depreciable item. *See Gaer*, 476 N.W.2d at 329; *Cossel*, 487 N.W.2d at 683. Rather, accelerated depreciation or the expense deduction for a depreciable asset should be recomputed

as though depreciation is taken on a straight-line basis. *See Gaer*, 476 N.W.2d at 329. What we gain from *Gaer* is that a noncustodial parent electing to expense certain depreciable assets should have that amount of expenses allocated over a reasonable depreciation period. *See id.* (self-employed truck driver allowed straight-line depreciation of truck); *see also Cossel*, 487 N.W.2d at 683.

We note, too, there is precedent for disallowing a depreciation deduction when the business for which the depreciation is claimed is not the principal source of the parent's income and the depreciation deduction results in the business claiming a tax loss. We did not permit a deduction for depreciation where a farming operation was neither a business nor an occupation, but was instead a hobby or tax shelter. *See In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa App. 1994). Neither of these situations exist here. Randy is requesting only that we allow him to deduct straight-line depreciation. His principal and only business is farming and this is the business for which he seeks the depreciation deduction.

Verna advances Randy should not be allowed to deduct depreciation because the child support guidelines do not provide for a depreciation deduction. We agree with Verna there is no specific language in the guidelines allowing a deduction for depreciation of business assets. Likewise, there is no specific language to allow a parent who is a self-employed farmer to deduct the other expenses associated with farming, such as seeds, fertilizer, farm chemicals, and real estate taxes on farm land. To go further, the guidelines, if interpreted to exclude depreciation as a business

expense because it is not specified, would preclude a self-employed person from deducting any business expense from the business's gross income because they are not specifically laid out in the guidelines language which is tailored to parents who are wage earners, not self-employed persons.

Even though the expenses a self-employed person incurs in doing business are not specified as deductions, the child support guidelines have generally been interpreted to allow a self-employed business person or farmer to deduct those reasonably relative to the cost of their doing business from the gross income received by the business. *See Gaer*, 476 N.W.2d at 329 (consideration should be given to business expenses reasonably necessary to maintain a business or occupation).

The guidelines, in using the words "gross monthly income," seems to be speaking of what is currently referred to as "total taxable income" on the Federal 1040 and as "net income" on the IA 1040. *See Cossel*, 487 N.W.2d at 683.

The question of deducting depreciation, as with all other expenses claimed as business deductions by a self-employed person, is whether it is a necessary and reasonable expense of doing business. Depreciation is a valid cost of doing business. *Id.* at 682. A farmer needs machinery and equipment to produce crops. *Id.* Depreciation deductions for farm machinery reflect the decrease in value of the equipment and have been established by the Internal Revenue Service and congress to reflect the cost of doing business. *Id.*

We find nothing here to show that the amortization of machinery and other costs as depreciation using a straight-line method is not a reasonable cost of Randy's doing business. There are no particular circumstances that would dictate we do otherwise. *In re Marriage of Maher*, 510 N.W.2d 888, 891 (depreciation should not be categorically deducted as an expense or treated as income, but rather the extent of its inclusion, if any, should depend on the particular circumstances of each case).

We reject Verna's contention we should reject class lives established by the Internal Revenue Code and consider each item separately. We find little merit in her contention the payments Randy makes are of no consequence because his equity in the asset is increased by the payment. First, principal payments are not deductible business expenses for income tax purposes. Secondly, while the principal payments decrease, Randy's equity in the equipment does not necessarily increase because at the same time the value of the equipment is decreasing because of its use and age.

We note, too, in this situation Randy, in essence, is paying again without the benefit of a depreciation deduction for that portion of the farm machinery he paid Verna for in the cash property settlement.

We re-calculate Randy's income over four years using the straight-line method of depreciation. Averaging these four years after re-calculating depreciation to straight-line, Randy had average annual income of $14,721. Randy's average net monthly income is $871; Verna has net monthly income of $822. Under the child support guidelines, we multiply $871 by 23.1% to find Randy's child support

obligation should be $201 a month. We modify the parties' dissolution decree to reduce Randy's child support obligation to $201 a month.

Verna contends Randy's income is actually higher than that shown on his income taxes. Verna has not presented any evidence to show Randy's income is higher than she claims. We deny her cross-appeal.

Verna asks to have Randy's child support obligation made retroactive to the date the petition for dissolution was filed. Randy was ordered to pay temporary child support of $304 a month. Neither party appealed from the award of temporary child support. Temporary child support orders in dissolution cases are final judgments which are appealable as a matter of right, *see* Iowa Rule of Appellate Procedure 1(a),[1] and must be appealed within thirty days from the district court decision in order to preserve the right to contest the award of assistance. *In re Marriage of Denly,* No. 98-527 (Iowa Feb. 17, 1999). Thus, we could not now modify the temporary order.

We modify the parties' dissolution decree to reduce Randy's child support obligation to $201 a month. We affirm the decision of the district court in all other respects.

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[1] Iowa Rule of Appellate Procedure 1(a) provides:

(a) All final judgments and decisions of the district court and any final adjudication in the district court under R.C.P. 86, involving the merits or materially affecting the final decision, may be appealed to the Supreme Court, except as provided in this rule and in rule 3, Rules of Appellate Procedure. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for dissolution of marriage or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of dissolution of marriage or annulment shall also be deemed a final decision.

We award no appellate attorney fees. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.