

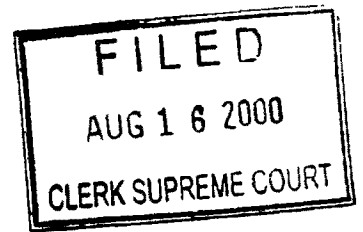
IN THE COURT OF APPEALS OF IOWA

No. 0-356 / 99-1730
Filed August 16, 2000

**IN RE THE MARRIAGE OF RONALD RAYMOND GREINER
AND ROBYN ANN GREINER**

**Upon the Petition of
RONALD RAYMOND GREINER,
Petitioner-Appellee,**

**And Concerning
ROBYN ANN GREINER,
Respondent-Appellant.**



Appeal from the Iowa District Court for Grundy County, James C. Bauch,
Judge.

On appeal following the dissolution of her marriage, respondent contends the court erred in imputing income of \$2,500 per month to her for purposes of child support computation. Ronald seeks an award of appellate attorney fees.

AFFIRMED.

Douglas V. Coonrad, Hudson, for appellant.

Karla J. Shea of Yagla, McCoy, & Riley, Waterloo, for appellee.

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

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SACKETT, C.J.

Respondent-Appellant Robyn Ann Greiner appeals from a district court order requiring her to pay Petitioner-Appellee Ronald Raymond Greiner child support for the benefit of their child, Jassenn, born March 16, 1991. Robyn contends the child support of \$403.15 the district court ordered she pay is excessive and the district court incorrectly imputed \$2,500 a month income to her. Ronald requests appellate attorney fees. We affirm.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we give them weight. Iowa R. App. P. 14(f)(7); *In re Marriage of Will*, 602 N.W.2d 202, 204 (Iowa App. 1999); *In re Marriage of Powell*, 474 N.W.2d 531, 532 (Iowa 1991).

Both parents have a legal obligation to support their children, not necessarily equally but in accordance with his or her ability to pay. See *In re Marriage of Craig*, 462 N.W.2d 692, 693 (Iowa App. 1990); *In re Marriage of Byall*, 353 N.W.2d 103, 108 (Iowa App. 1984). Parents must give their children's needs high priority and be willing to make reasonable sacrifices to assure their care. *Marriage of Fidene*, 462 N.W.2d 710, 712 (Iowa App. 1990).

Generally, the child support guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result. Iowa Code § 598.21(4)(a). There is a rebuttable presumption the amount of child support determined according to the guidelines is the correct amount of child support to be awarded. *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992). That amount may be adjusted upward or downward if the court finds an adjustment

necessary to provide for the needs of the child and do justice between the parties under the special circumstances of the case. *State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 695 (Iowa 1993). To justify a departure from the guidelines, the court must make written findings that the scheduled amount would be "unjust or inappropriate" under the criteria established by the supreme court. Iowa Code § 598.21.

Deviation from the guidelines may occur if it is found "adjustments are necessary to provide for the needs of the child and to do justice between the parties, payor, or payee under the special circumstances of the case." *State ex rel. Cacek v. Cacek*, 484 N.W.2d 592, 593 (Iowa 1992); *see also State ex rel. Lara v. Lara*, 495 N.W.2d 719, 721 (Iowa 1993).

In determining a child support obligation we first look to present earnings. *See In re Marriage of Byall*, 353 N.W.2d at 107. Child support is generally not reduced because of self-inflicted or voluntary reductions in income. *See In re Marriage of Vettermack*, 334 N.W.2d 761, 762-63 (Iowa 1983); (citations omitted). Though support may also be based on a payor's earning capacity rather than just his or her actual earnings. *See In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa App.1989); *In re Marriage of Sherman*, 447 N.W.2d 564, 566 (Iowa App.1989). It is appropriate to consider earning capacity rather than actual earnings in applying the Uniform Child Support Guidelines. *In re Marriage of Raue*, 552 N.W.2d 904, 907 In re, (Iowa App. 1996); *In re Marriage of Flattery*, 537 N.W.2d 801, 803 (Iowa App.1995). However, this approach requires a finding that the use of actual earnings would create a substantial injustice or

adjustments are necessary to provide for the needs of the children and to do justice between the parties. *Id.*

Robyn is about fifty-six years old. She is a dental hygienist and also holds a degree from the University of Northern Iowa. She has remarried and her current husband has an annual of income of approximately \$70,000.00. They have no dependents. Robyn has worked at a variety of jobs. She claims she cannot work full-time as a hygienist because she suffers from carpal tunnel syndrome. In 1998 she reported wages of \$15,184.00 and a loss on a business of \$8,418.00. She contends she can only earn \$15,000 a year and that figure should be used in computing her child support obligation. The district court in rejecting this contention and setting her income at \$2,500 a month found in part as to Robyn's abilities:

"While she may contend she is not capable of grossing \$2,500.00 a month, in the court's view she is avoiding obtaining work and meeting her obligations. . . . [s]he is a capable, intelligent, and forceful individual who possesses many skills. She is a certified dental hygienist; and while she may contend she can only work part-time, she has not made a very concerted effort to obtain and maintain part-time employment of 20 hours a week in this field. In addition, she has a radiology degree; and she has her bachelor's degree in science from the University of Northern Iowa She had not utilized this degree and could easily obtain her teaching certificate with a minimum of effort. She has sales skills, people skills, computer skills, She has a great deal of experience in the science, medical and dental field and would be a desirable employee in any number of positions in the health field. She simply has not made any effort to utilize her education and experience in obtaining work."

On our de novo review of the record we see no reason to disagree with the district court's findings.

Robyn argues that just because she has the training does not mean she can find a good job. We recognize that while education generally enhances a person's earning capacity, a college degree does not carry with it a guarantee of a good job and an adequate salary. In assessing earning capacity, we generally do not look at what a party could have done with his or her education, but rather we look at what he or she has actually done. See *In re Marriage of Griffin*, 356 N.W.2d 606, 609 (Iowa App.1984).

Robyn has been gainfully employed and has had job opportunities she has turned down for a variety of reasons. She indicated in testimony she did not need to work except to pay her child support. She also contends it is not her current husband's responsibility to pay her child support.

We agree with Robin that her responsibility for child support is not her current husband's responsibility. See *Marriage of Will*, 602 N.W.2d at 205. Income as defined by the child support guidelines does not include income of a current spouse. There is generally no basis to consider the income of a current spouse as a factor supporting an upward deviation from the guideline amount. See *id.* However, the fact that her current spouse is meeting Robyn's financial needs is a valid factor to consider in determining her ability to pay support and in assessing a deviation from the guidelines.

The district court did not abuse its discretion in fixing child support based on Robyn's earning capacity rather than her actual earnings. She seeks excuses for not accepting employment. The district court hearing her testimony gave little credence for her excuses. She has a good education and employment

opportunities she has not accepted. She suggested that with her husband's income it is not necessary for her to work. She has limited responsibilities for others and the ordered support does not create a hardship situation for her.

A refusal to consider her earning capacity in fixing future support would result in an injustice to her child. See *Iowa Dept. of Human Services ex rel. Gonzales v. Gable*, 474 N.W. 2d 581, 583 (Iowa App. 1991). See also *Bergfeld*, 465 N.W.2d 865, 870 (Iowa 1991). The district court did not abuse its discretion in fixing child support in this case.

Ronald requests we award appellate attorney fees. An award of attorney fees is not a matter of right, but rests in our discretion. *In re Marriage of Wendell*, 581 N.W.2d 197, 201 (Iowa App. 1993). We award no appellate attorney fees.

AFFIRMED.