

IN THE COURT OF APPEALS OF IOWA

No. 7-041 / 96-0677

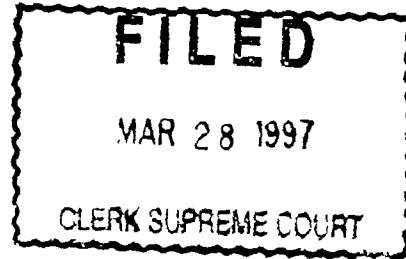
STATE OF IOWA ex rel. SARENITY
LANAE BIGBEAR, A Minor,

Appellant,

vs.

LONNIE ANTHONY KENNEDY,

Appellee.



Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

Lonnie Kennedy was ordered to pay child support in an amount that deviates
from the child support guidelines. The State appeals. **AFFIRMED AS MODIFIED.**

Thomas J. Miller, Attorney General, Diane M. Stahle, Deputy Attorney
General, Robert R. Huibregste, Assistant Attorney General, and John C. Baker, for
appellant.

Lonnie Anthony Kennedy, Sioux Center, pro se, appellee.

Considered by Habhab, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by the State contending the district court improperly deviated from the child support guidelines in setting Lonnie Kennedy's child support obligation. We affirm as modified by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Our review of this equity case is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings, but are not bound by them. Iowa R. App. P. 14(f)(7).

Lonnie Kennedy and Melva Bigbear are the parents of Sarenity Lanae Bigbear, born January 22, 1995. Melva has received ADC benefits since the birth of Sarenity. The trial court imputed \$600 monthly income to Melva. Lonnie's net monthly income after allowable deductions, which includes a deduction for a prior child support order, is \$991 (net bi-weekly of \$457.48 x 26 weeks ÷ 12 months). Under the guidelines, Lonnie's child support obligation for one child is \$239 (\$991 x .241).

The district court ordered Lonnie to pay \$160 per month, deviating from the guideline amount because "there was no evidence . . . this Respondent has any fatherly relationship with this child or his other child. In such cases experience has taught this court that there is an amount such a father will pay but if ordered to do much more the obligation will be avoided by one means or another." We conclude the district court improperly deviated from the child support guidelines.

Deviation from the guidelines is discouraged. *State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 695 (Iowa 1993). Lonnie has received the appropriate deduction for a prior support order. The guidelines take into account the reasonable living expenses of the noncustodial parent. *State ex rel. Dep't of Human Servs. v. Burt*, 469 N.W.2d 669, 670 (Iowa 1991). Whether Lonnie chooses to have a relationship with the children he parents is irrelevant to his obligation to support those children. This record does not support a finding that application of the guidelines would result in substantial injustice to Lonnie.

We modify the district court order as follows. Lonnie shall pay the sum of \$239 per month toward the current support of Sarenity. Lonnie's arrearage shall be paid in installments of \$25 per month.

AFFIRMED AS MODIFIED.