IN THE COURT OF APPEALS OF IOWA

No. 7-028 / 96-0337

STATE OF IOWA ex rel. LEVI MEYER and MELISSA PHELPS,

Appellants,

vs.

WILLIAM C. MEYER,

Appellee.

FILED
MAR 28 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clay County, Frank B. Nelson, Judge.

The State appeals a district court ruling modifying William Meyer's child support obligation in an amount that deviates from child support guidelines. **AFFIRMED AS MODIFIED.**

Thomas J. Miller, Attorney General, Diane M. Stahle, Deputy Attorney General, Robert R. Huibregtse, Assistant Attorney General, and Dianne Wallwey, Assistant County Attorney, for appellant.

William C. Meyer, Sioux Rapids, 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 William Meyer'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).

William Meyer and Sue Phelps are the parents of two children, Levi, born May 13, 1983, and Melissa, born April 4, 1987. Meyer and Phelps separated in 1990, at which time Phelps began receiving ADC benefits. In September 1992, Meyer was ordered to pay child support in the amount of $50 per month. In addition, he was ordered to pay $50 per month toward his child support arrearage and to enroll the children in any health benefit plan available to him.

The Child Support Recovery Unit, on behalf of Levi and Melissa, filed a petition to modify Meyer's child support, alleging Meyer had secured employment and he should be required to pay support as established by the child support guidelines.

Meyer's gross monthly income is $1212. After allowable deductions, including $200 per month for the children's medical health insurance, his net monthly income is $733. Sue Phelps has no income. Under the guidelines, Meyer's child

support obligation for two children is $268 per month. However, this amount of child support would leave Meyer with $465 available for living expenses. Meyer's monthly expenses for rent and utilities alone are $350. Moreover, Meyer has many outstanding debts, including $100 per month on a judgment from Buena Vista County for his past mental health treatment, and more than $1000 for uncovered medical and dental expenses for himself and the children's treatment. We conclude Meyer's medical expenses warrant a downward deviation from the guidelines. *See State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 697-98 (Iowa 1993) (downward adjustment to allow non-custodial parent resources available for living expenses).

We agree with the district court that there has been a substantial change of circumstances warranting a modification of Meyer's child support obligation. We also agree with the district court that Meyer's financial condition warrants a deviation from the child support guidelines. We disagree, however, with the extent the district court deviated from the guidelines. We modify the district court's order as follows. William Meyer shall pay the sum of $150 per month toward the children's current support. Meyer's arrearage shall be paid in installments of $15 per month. We affirm as modified.

AFFIRMED AS MODIFIED.