IN THE COURT OF APPEALS OF IOWA

No. 2-367 / 92-09

FILED
FEB 02 1993
CLERK SUPREME COURT

IN RE THE MARRIAGE OF RICKY FRANKLIN LEE AND KANDY LYNNE LEE

Upon the Petition of

RICKY FRANKLIN LEE,

Appellant,

And Concerning

KANDY LYNNE LEE,

Appellee.

Appeal from the Iowa District Court for Keokuk County, Richard J. Vogel, Judge.

The husband appeals certain economic provisions of the parties' dissolution decree. **AFFIRMED.**

Daniel M. Voss of Day & Meeker, Washington, for appellant.

Annette J. Scieszinski of Scieszinski & Owen, Albia, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ. Schlegel, J., takes no part.

HABHAB, J.

Ricky and Kandy Lee were married on July 13, 1985. They had one child, Jaclyn Rachelle Lee, born November 12, 1988. During the marriage the parties lived on a farm near Sigourney, Iowa.

Ricky was thirty-two years old at the time of the trial. He is self-employed as a farmer. Ricky has a high school diploma and some college credits.

Kandy was thirty-three years old at the time of the trial. She is employed as a speech and language pathologist by Southern Prairie Area Education Association. Kandy's income is about $27,000 per year, and she has net income of $1,553 per month. Kandy has a master's degree in speech and language pathology.

A dissolution decree was entered for the parties on December 3, 1991. The decree incorporated the parties' stipulation. The parties agreed to joint legal custody of Jaclyn, with Kandy having primary physical care. The parties also agreed to a division of their property.

The parties were unable to agree to the amount of Ricky's child support obligation and who should have the right to declare Jaclyn a dependent for income tax purposes. The court examined Ricky's income tax returns for 1988, 1989, and 1990, and made certain adjustments to Ricky's taxable income. The court determined Ricky had net income of $2,000 per month. The court then applied the child support guidelines and ordered Ricky to pay child

support of $450 per month. The court awarded Kandy the right to declare Jaclyn as a dependent. Ricky has appealed.

Review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Ricky contends the district court improperly calculated his income for purposes of applying the child support guidelines. He states his income in 1991 would be about $8,592, and his net income about $601 per month. Ricky believes the court should have used only his current taxable income to calculate his child support obligation. Using his net income figure of $601 per month, his child support obligation would be $174 per month.

A court must determine the parents' current monthly income from the most reliable evidence presented. In re Marriage of Powell, 474 N.W.2d 531, 534 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parents' income. Id. Where the parents' income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income. Id.

Generally, a farmer's net income should be determined from an average of twenty-four to thirty-six months'

income. In re Marriage of Cossel, 487 N.W.2d 679, 681 (Iowa App. 1992). The fact that a noncustodial parent is a farmer does not justify departure from the guidelines. Id.

We conclude the district court correctly used an average of Ricky's income over the years 1988, 1989, and 1990 to determine his net income. We note that when Ricky computed his net income figure of $601 per month, he made no adjustment for excess depreciation. The court, in reaching its figures, did adjust for excess depreciation. Further, Ricky admits in his brief there is not a great disparity between his income and that of Kandy, who earns about $27,000 per year. We affirm Ricky's child support obligation of $450 per month.

Ricky also contends the district court should have awarded him the right to claim Jaclyn as a dependent for income tax purposes. He claims he will be providing a majority of the support for Jaclyn.

We find Ricky has not sufficiently shown he will be providing more than one-half of the support for Jaclyn. See In re Marriage of Eglseder, 448 N.W.2d 703, 705 (Iowa App. 1989). We also consider that Kandy has a higher taxable income due to the fact that Ricky is able to deduct farm depreciation. Thus, she will benefit the most from the exemption. We affirm the award of the right to declare Jaclyn as a dependent for income tax purposes to Kandy.

We affirm the district court on all issues. Costs of this appeal are assessed to Ricky.

AFFIRMED.