IN THE COURT OF APPEALS OF IOWA

No. 0-250 / 89-1257

FILED
SEP 26 1990
CLERK SUPREME COURT

IN RE THE MARRIAGE OF BARBARA ANN TEUFEL AND STEVEN ROGER TEUFEL

Upon the Petition of

BARBARA ANN TEUFEL,

Petitioner-Appellee,

And Concerning

STEVEN ROGER TEUFEL,

Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Appellant challenges the support and property provisions of his dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Gregory J. Epping of Terpstra, Terpstra & Epping, Cedar Rapids, for appellant.

James L. Chipokas of Chipokas & Flitz, Cedar Rapids, for appellee.

Considered en banc.

SACKETT, J.

The primary issue on appeal concerns child support and the allocation of dependency exemptions for two children born in 1982 and 1987. We affirm as modified.

Respondent-appellant Steven Roger Teufel was ordered to pay child support of $225 per week for both children, to be reduced two-thirds when there was one child. The support was ordered to increase each year by the increase of the Consumer Price Index, but it was not to exceed the percentage increase of respondent's salary. Respondent was also to maintain health insurance on the children and pay one-half of any uninsured medical, dental, drug, and eye classes, and three-fourths of uninsured hospitalization and orthodontic. No provision was made concerning tax exemptions for the children.

Steven appeals contending the support ordered exceeds the child support guidelines and should have been decreased by more than one-third when the second child reached majority. He further contends the trial court should have allocated the tax exemptions for the children to him and ordered Barbara to execute the required documents so he could claim the children as dependents.

The issue of the application of child support guidelines was not addressed at the trial court level. We remand for that purpose. We do not retain jurisdiction. Until a new order is filed, Steven shall pay child support in accordance with the trial court decree.

We find the cost of living provision incorporated by the trial court to be equitable, and affirm that portion of the trial court's order. See In re Marriage of Stamp, 300 N.W.2d 275, 279 (Iowa 1980); In re Marriage of Phipps, 379 N.W.2d 26, 29 (Iowa App. 1985).

Steven asks that he be allocated the income tax exemption for the children and Barbara be ordered to execute the documents required to allow him to claim the exemption. We cannot, under this record, determine if the requested allocation of the tax exemption to him would be equitable. No effort was made to illustrate the respective tax liabilities with or without tax exemptions, both as to ultimate tax liability and the low income allowance. We find no reason under this record to require the custodial parent to sign a multiple support agreement. See In re Marriage of Eglseder, 448 N.W.2d 703, 704-05 (Iowa App. 1989); In re Marriage of Kerber, 433 N.W.2d 53, 54-55 (Iowa App. 1988).

Steven's last contention is the property settlement is not equitable. We have examined it under the applicable dictates. The property settlement is equitable. See In re Marriage of Dahl, 418 N.W.2d 358, 360-61 (Iowa App. 1987).

The parties shall pay their own appellate attorney fees and one-half the cost on appeal.

AFFIRMED AS MODIFIED AND REMANDED.

All judges concur except Hayden, J., who specially concurs; Habhab, J., who concurs in part and dissents in part.

HAYDEN, J. (specially concurring)

I concur in the result.

HABHAB, J. (concurring in part and dissenting in part)

I concur with the majority opinion except that part that remands this cause for hearing pursuant to the Uniform Child Support Guidelines. As to that part, I dissent.

The dissolution decree was entered on July 20, 1989. The temporary child support guidelines were not adopted as permanent child support guidelines by the supreme court until September 29, 1989. Under the circumstances here, I do not believe the guidelines should apply.

The supreme court order that adopted the guidelines provided that when the amount prescribed was used by the trial court as the basis of an award, a rebuttable presumption of correctness was established. Since it is a rebuttable presumption, I believe the litigants before the trial court should be afforded the opportunity to make their record as to why the amount as prescribed should serve as the amount to be awarded as child support or whether that amount, because of the special circumstances of the case, should be adjusted either upward or downward. I also believe that when an amount is granted that is inconsistent with the guidelines, the trial court, if it does not employ the guidelines, should be afforded the opportunity to explain by written findings why the guidelines are unjust or inappropriate. For these reasons we, as an appellate court, should not for the first time impose those guidelines.

However, under the circumstances here, I see no reason to remand. The trial court fixed child support under the law as it existed at trial time. The support issue was litigated in accordance with the then statutory and case law. Merely because the guidelines were adopted after trial and during the course of the appeal is not sufficient reason to remand for rehearing on the issue of child support. I, of course, would require adherence to the supreme court's order of September 28, 1989, on all cases tried on and after the date of its adoption.

To the extent that In re Marriage of Jennings, 455 N.W.2d 284 (Iowa App. 1990), conflicts with this dissent, I would overrule Jennings.