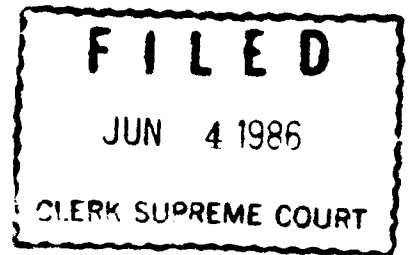


IN THE COURT OF APPEALS OF IOWA



IN RE MARRIAGE OF ELLEN L. TROXEL AND JOHN A. TROXEL

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Upon the Petition of)
ELLEN L. TROXEL,)
Petitioner-Appellant,)
And Concerning)
JOHN A. TROXEL,)
Respondent-Appellee.)

FILED JUNE 4, 1986

6-133
85-1595

Appeal from the Iowa District Court for Linn County (DM 13578) - Van
D. Zimmer and Lynne Brady, Judges.

Petitioner wife appeals an order granting her temporary support for herself
and her minor child. **AFFIRMED AS MODIFIED.**

James L. Chipokas, of Chipokas & Flitz, Cedar Rapids, Iowa, for the
petitioner-appellant.

T. Todd Becker, of the Tom Riley Law Firm, P.C., Cedar Rapids, Iowa,
for the respondent-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

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Petitioner wife appeals an order granting her temporary support for herself and her minor child. She contends the award is inadequate. We affirm as modified.

Ellen and John Troxel were married in 1977. At the time this action commenced Ellen was 34 years old and her husband John was 28 years old. They have one child, Marci, who is 16 years old. She is the natural child of Ellen; John is the adoptive father.

John is employed at Rockwell Graphic Systems, Inc. in Cedar Rapids, Iowa. He claims his net earnings are \$1,143 per month. Ellen maintains that he earns in excess of \$40,000 per year. Ellen is currently unemployed. During the marriage, she did not work outside the home.

In October, 1985, Ellen filed a petition for separate maintenance requesting, inter alia, temporary and permanent support for herself and Marci. John then filed an answer and counterclaim requesting a dissolution of marriage.

The district court entered an order awarding Ellen temporary support of \$100 per week pending the outcome of the litigation. The order did not distinguish between support for Ellen and support for the child. Ellen has appealed this result.

The relevant considerations for determining if an award of temporary support is adequate include the age and sex of the applicant, the physical and pecuniary condition of the parties, and any other pertinent facts reflected in the parties' affidavits. Iowa Code § 598.14 (1985). Our de novo review is limited to matters set forth in the application for support, the affidavits, and the statements of income. id.

It is apparent from the record that the \$100 per week is insufficient to cover Ellen's claimed living expenses of approximately \$1,370 per month. It is Ellen's contention that the amount of temporary support should be increased to \$200 per week.

After reviewing the record we conclude that some relief is justified. John submitted to the trial court a pay stub for the period ending October 20, 1985. It reflects that, as of that date, John had earned a gross income of approximately \$37,300. This supports Ellen's claim that John earns over \$40,000 per year and has the ability to pay more than \$100 per week in temporary support.

We recognize that John's earnings fluctuate with the amount of overtime work available and that his year-to-date earnings reflect a substantial amount of overtime work. However, John's claim that overtime work is no longer available is not adequately supported by the record. Any finding to this effect would be based largely upon speculation.

Based upon the record before this court, we increase the amount of temporary support for Ellen and her child to \$160 per week. In reaching this amount we have considered the expenses of both parties as well as potential fluctuations in John's earning capacity.

Ellen requests attorney fees on appeal. In evaluating this request, we consider the needs of the petitioner and John's ability to pay. Without attempting to fix the total value of services, we conclude Ellen should be awarded appellate attorney fees in the amount of \$300.

AFFIRMED AS MODIFIED.