

IN THE COURT OF APPEALS OF IOWA

No. 2-637 / 92-864

FILED

SEP 02 1993

CLERK SUPREME COURT

IN RE THE MARRIAGE OF DAVID DETLEF DAU AND MELANIE ANN DAU

Upon the Petition of

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DAVID DETLEF DAU,

Appellant,

And Concerning

MELANIE ANN DAU,

Appellee.

Appeal from the Iowa District Court for Pottawattamie
County, Leo F. Connolly, Judge.

The husband appeals a district court decision, on
remand from the court of appeals, determining his wife's
child support obligation. **AFFIRMED AS MODIFIED.**

A. W. Tauke of Porter & Tauke, Council Bluffs, for
appellant.

Scott H. Peters of Peters Law Firm, P.C., Council
Bluffs, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

DONIELSON, P.J. 000164

David and Melanie Dau were married in 1980. They have two children: Christina Ann Dau, born on October 26, 1981; and Daniel Detlef Dau, born on July 31, 1984.

A decree of dissolution was entered for the parties on April 9, 1987. The court awarded the parties joint legal custody of the children, with David having primary physical care. Melanie was ordered to pay child support of \$12.50 per month per child.

Melanie filed a petition for modification of custody on August 13, 1990. At the time of the modification David was self-employed as a farmer. Since the time of the dissolution Melanie remarried, and her name is now Melanie Hubbert. She moved to McCook, Nebraska, and has become a LPN. Melanie is studying to become a registered nurse.

On April 29, 1991, the district court modified the dissolution decree to award Melanie primary physical care of the children. David was ordered to pay child support of \$150 per month.

David appealed. On December 31, 1991, we modified the district court's modification order to return physical care of the children to David. In re Marriage of Dau, No. 91-722 (Iowa App. Dec. 31, 1991) (Unpublished). We remanded the case to the district court to determine Melanie's obligation for child support under the child support guidelines. Id.

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A hearing was held in district court on May 1, 1992. Since the district court's modification order, Daniel, the youngest child, has been diagnosed as having muscular dystrophy. David is still self-employed as a farmer. His income is \$15,852, and he has net monthly income of \$890. Melanie is employed as an LPN at a hospital in McCook. Because of cutbacks at the hospital she only works between twenty to thirty-two hours per week. Her income is about \$9,700 and she has net monthly income of about \$600.

The district court ordered Melanie to pay child support of \$180 per month beginning June 1, 1992. The court also ordered that any child support arrearages of the parties effectively canceled each other out. Due to Daniel's illness, the court increased Melanie's visitation. David has appealed.

Our 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).

David contends Melanie's child support obligation should be increased. He believes she has voluntarily reduced her income by attending classes. He asks us to base Melanie's child support obligation on the assumption she is working forty hours per week.

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We must determine a parent's 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 parent's income. Id.

We find no evidence Melanie has voluntarily reduced her income. Melanie is working less than forty hours per week. However, this is not by choice, but is due to cutbacks at the hospital where she works. We affirm the district court order concerning the amount of Melanie's child support obligation.

David also asks us to make Melanie's child support obligation retroactive to January 1, 1992. The district court had the authority to make the child support payments retroactive to the date of filing the petition to modify. See In re Marriage of Chesterman, 462 N.W.2d 696, 698 (Iowa App. 1990).

The district court noted that both David and Melanie had child support arrearages. The court concluded these amounts canceled each other out. Based on this fact, the court specifically made Melanie's child support obligation effective on June 1, 1992. We affirm the district court on this issue.

David also asks us to require Melanie to pay half of the children's medical expenses not covered by insurance. Under the child support guidelines, medical support is not included in the monetary amount of child support. The

guidelines require the trial court to enter an order for medical support as required by statute.

No order concerning medical support was entered in this case. This issue is particularly important due to Daniel's illness. We determine we may address this issue now. We order David to pay for the children's medical insurance. We determine Melanie should be responsible for half of the children's medical expenses not covered by insurance. We point out that it is in the children's best interests for David and Melanie to work together concerning the children's medical bills.

Both parties request attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own attorney fees. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.