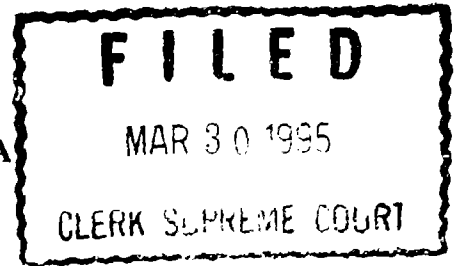


IN THE COURT OF APPEALS OF IOWA

No. 4-551 / 94-0686



STATE OF IOWA, ex rel.,
JIMIJO LYNN FOX and GENNA KAY
HARKEN, Minor Children,

Petitioner-Appellant,

vs.

JAMES LEROY FOX,

Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The State challenges the order establishing the child support obligation of James Fox for Jimijo Fox and Genna Harken. **AFFIRMED AS MODIFIED.**

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Kay Delafield, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and James A. Lally, Assistant County Attorney, for appellant.

Thomas W. Langlas, Waterloo, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

HABHAB, J.

James Fox is the natural father of Jimijo Fox, born December 14, 1981, and Genna Kay Harken, born February 1, 1985. Gretchen Harken is Jimijo's and Genna's natural mother. Harken and Fox were never married.

Fox is employed by John Deere Company. His net monthly income is \$2307. He has a prior court-ordered child support obligation of \$951 per month for three other children born out of wedlock. Harken is unemployed, receiving public assistance for the support of her children.

The State filed a petition to establish paternity and child support for Jimijo and Genna. A blood test confirmed Fox's paternity of the two children and the matter proceeded before the court on stipulated facts. The parties stipulated that, pursuant to the guidelines, Fox's child support obligation for Jimijo and Genna, after deducting the prior court-ordered child support of \$915, would be \$504 per month. However, in the order establishing child support the court set the obligation at \$205 per month. The court acknowledged the amount deviated from the guidelines stating the reason for the deviation as "[i]nability to pay - other child support obligations."

The State now appeals claiming the court erred in failing to cite sufficient reasons for its deviation from the guidelines. It also claims there was no evidence to support the deviation.

Our review of issues in equity is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. State ex rel. Nicholson v. Toftee, 494 N.W.2d 694, 695 (Iowa 1993). We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(7).

The State contends insufficient evidence was presented to rebut the presumption that the amount indicated by the child support guidelines is correct. Regarding the deviation from the guidelines, our supreme court has stated:

The purpose of the guidelines is to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes. While the guidelines cannot take into account the specific facts of individual cases, they will normally provide reasonable support. In ordering child support, the court should determine the amount of support specified by the guidelines. There shall be a rebuttable presumption that the amount of child support that would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such adjustment necessary to provide for the needs of the children and to do justice between the parties under the special circumstances of the case.

Nicholson, 494 N.W.2d at 695. We must determine if strict application of the guidelines would result in substantial injustice. See State ex rel. Reaves v. Kappmeyer, 514 N.W.2d 101, 104 (Iowa 1994).

Deviation from the guideline amounts is allowed to provide for the needs of the children and to do justice between the parties. Nicholson, 494 N.W.2d at 698; State ex rel. Department of Human Services v. Burt, 469 N.W.2d 669, 670 (Iowa 1991). In order to make such a deviation from the presumptively correct guideline amounts, the district court must make a written finding the guideline amount would be unjust or inappropriate under the criteria set out in the guidelines. State ex rel. Nielsen v. Nielsen, 521 N.W.2d 735, 737 (Iowa 1994); In re Marriage of Russell, 479 N.W.2d 865, 870 (Iowa 1991).

In our de novo review of this case, we find no special circumstances which would justify a deviation from the guideline amount. James is currently paying a child support arrearage for the child support obligation for his three previous children. Although this fact may be taken into consideration when determining whether it is unjust to apply the guidelines, standing alone does not justify a deviation from the guidelines. The record does not provide us with any information regarding how this arrearage came about or how long James will be paying this arrearage. In addition, although James argues on appeal that he cannot afford the guideline amount, the record is devoid of any evidence to support his claim. No affidavit of financial status was provided, as was provided, for example, in Nicholson.

We find there is no support in the record for a deviation from the guideline amount. We modify the district court's finding by strictly following the child support guidelines. We conclude the child support obligation for Jimijo and Genna shall be \$504.00 per month.

AFFIRMED AS MODIFIED.