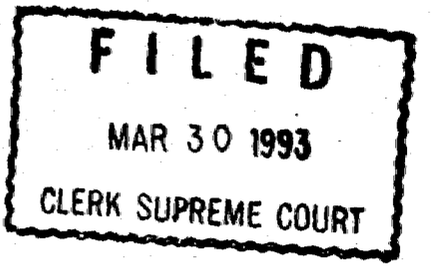
IN THE COURT OF APPEALS OF IOWA

No. 2-531 / 92-134



IN RE THE MARRIAGE OF DEBBIE ANN MEEKS AND TERRY ROBERT MEEKS

Upon the Petition of

DEBBIE ANN MEEKS,

Appellee,

And Concerning

TERRY ROBERT MEEKS,

Appellant.

Appeal from the Iowa District Court for Benton County, Larry J. Conmey, Judge.

The respondent husband appeals from an order of the district court ordering him to pay $1000 per month child support. **AFFIRMED.**

Stephen B. Jackson, Cedar Rapids, for appellant.

William F. Olinger, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

Terry Meeks appeals from an order of the district court ordering him to pay $1000 per month child support.

Debbie and Terry Meeks were married in 1980 and have three minor children. Debbie is unemployed and has no work history other than working in the home and part-time house cleaning. Terry is self-employed as a farmer. In August 1991, Debbie filed a petition for dissolution of marriage. Debbie received temporary physical custody of the children by mutual consent. Debbie also requested temporary support for herself and the three minor children.

In September 1991, the district court awarded temporary support to Debbie in the amount of $1200 per month. The district court did not distinguish between child support and spousal support. Terry then filed an application for a rehearing. Following a November 1991 hearing, the district court determined Terry had a net worth in excess of $100,000, mostly from his farming operations, and that after deducting taxes and unreimbursed medical expenses his net monthly income was $1721. Pursuant to the child support guidelines, the court found Terry's obligation to be $468 per month. However, the district court concluded it was necessary to deviate from the child support guidelines in order to properly provide for the minor children. Accordingly, the court ordered Terry to pay $1000 per month in support. Terry filed a rule 179(b) motion, which was denied.

Terry now appeals. He contends the district court erred in establishing his monthly child support obligation at $1000. Specifically, Terry contends the court erred in calculating his net monthly income.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the district court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Before assessing whether the district court properly calculated Terry's support obligation under the guidelines, we note the amount of child support Terry was ordered to pay was ultimately based on a deviation from the guidelines. Therefore, if we find the district court properly adjusted Terry's support obligation, the calculation of Terry's support under the guidelines will no longer be controlling.

We first address whether the district court correctly determined a deviation from the guidelines was warranted. The Iowa Supreme Court child support guidelines provide the court shall not vary from the guidelines without a written finding that the guidelines would be unjust or inappropriate under the following criteria:

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> (1) Substantial injustice would result to the payor, payee, or child;
> (2) Adjustments are necessary to provide for the needs of the child and to do justice between the parties, payor, or payee under the special circumstances of the case; and
> (3) Circumstances contemplated in Iowa Code section 234.39 [(regarding foster care)].

Child Support Guidelines (December 31, 1990). See In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991).

According to the district court's calculations, Terry's obligation under the guidelines would have been $468 per month. This figure was based on a gross monthly income of $1979, less $258 deductions for state and federal income tax, social security, and unreimbursed health and hospitalization coverage, leaving a net monthly income of $1721. The district court then applied a percentage of 27.2 percent, resulting in an obligation of $468 per month.

However, in its order the district court ruled:

> The court further finds that the Respondent has a net worth in excess of $100,000 and that to permit the Respondent to pay only $468 per month as child support would result in a substantial injustice to the children. The Petitioner is unskilled and has no meaningful work record and she worked primarily as a housewife doing childcare and cleaning houses for other people during the marriage.

The court then ordered Terry to pay the $1000 per month as support.

We find the district court properly varied from the child support guidelines. This was a marriage in which substantial assets were accumulated. By Terry's own estimation, he has assets in excess of $100,000. He is the operator of a successful farming operation and has no

outstanding debts. On the other hand, Debbie has few marketable skills and is unemployed. As the primary caretaker and homemaker, Debbie contributed substantially to both the farm and to the family during the eleven-year marriage. Debbie is currently in a situation where she must rent, and support is required for the maintenance of a separate household.

No separate award of temporary alimony was granted in the district court's temporary order. We are not willing to force Debbie and the three minor children to live in economic hardship until a final determination of the exact distribution of the assets is made. We find the award of $1000 per month was clearly necessary to avoid substantial injustice to Debbie and the three children.

We do concede the district court did not properly calculate what Terry's support obligation would have been under the guidelines. According to the child support guidelines, the applicable percentage figure for three children is 43.5 percent, and not 27.2 percent. Using the district court's figure of $1721 for Terry's net monthly income and the correct percentage of 43.5 percent, Terry's support obligation would be $749 per month.

However, Terry also argues the district court erred in failing to subtract the $354 monthly health insurance coverage from his gross earnings. According to the supreme court guidelines, "net monthly income" means gross monthly income less (among other deductions) deductions for

dependent health insurance coverage. Child Support Guidelines (December 31, 1990). This court concedes that, if the guidelines were applicable and no deviation was warranted, some additional deduction should have been made for the amount Terry paid in this regard. However, we note the $354 per month insurance which Terry pays is a family policy, and does not just benefit the three minor children (the dependents). Terry has failed to submit any evidence regarding what amount of this policy covers himself, and not the children. Therefore, we would be unable to calculate Terry's support obligation under the guidelines because we do not know what portion of the $354 to deduct.

Terry also contends the district court erred in computing his tax liability. He argues the 1990 figure of $1721 was unreliable because the district court failed to properly take into account his 1990 amended tax deductions. Using the 1990 amended tax deduction figures, we find Terry's tax liability to be about $423 per month.

However, even if we were to rely upon Terry's alleged net income of $1202 ($1979 less total tax deductions of $423 and hospitalization and health premiums of $354), Terry's support obligation would still be about $523 per month. As a result, Terry's obligation under the guidelines ($523) would be about $55 more per month than what the district court had calculated his obligation to be ($468).

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Nevertheless, because of our result, these discrepancies do not affect Terry's support obligation. To require Debbie to support herself and three children on $468, $523, or even $749 per month would result in a substantial injustice to Debbie and the three children. Based upon Debbie's financial situation, the needs of the three children, and Terry's substantial assets, we find a deviation from the child support guidelines was warranted and the district court properly awarded $1000 temporary support.

For the reasons stated, we affirm the judgment of the district court.

The costs of this appeal are taxed to Terry.

AFFIRMED.