IN THE COURT OF APPEALS OF IOWA

No. 6-135 / 95-212

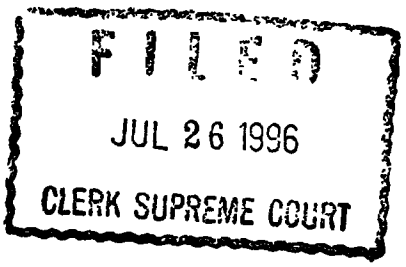
IN RE THE MARRIAGE OF FRANK PENNINGTON, JR.
AND DIANA D. PENNINGTON

Upon the Petition of
FRANK PENNINGTON, JR.,

Appellant,

And Concerning
DIANA D. PENNINGTON,

Appellee.



Appeal from the Iowa District Court for Lee County, David B. Hendrickson, Judge.

Frank Pennington appeals from a modification of the child support provision of the parties' dissolution decree. **AFFIRMED.**

Thomas D. Marion of Norman & Marion, Keokuk, for appellant.

James F. Dennis, Keokuk, for appellee.

Considered by Sackett, C.J., Habhab, and Huitink, JJ.

PER CURIAM

This is an appeal by a husband claiming the district court should not have modified the parties' dissolution decree to increase his child support obligation. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Frank and Diana Pennington were divorced in 1986. Diana was awarded primary physical care of the parties' two children, Corinne, born in 1980, and Foulan, born in 1982. Frank was ordered to pay child support of $476 per month until June 1987, when his obligation increased to $520 per month.

In 1992, Frank filed an application to modify child support, claiming his income had been reduced. Diana also filed an application to modify, seeking to increase Frank's child support. On February 1, 1993, the court determined that based on Frank's regular income no modification was necessary. The court allowed the parties additional time to present evidence on whether Frank received overtime pay.

On January 27, 1994, Diana filed an application to modify to increase Frank's child support obligation. Both parties are employed by Schlegel Foods. The parties stipulated that Diana's net monthly income is $1,104 and that Frank's net monthly income is $2,569 when his overtime pay is included. The court applied the child support guidelines and determined Frank should pay child support of $767. The court determined this increase in support should be made retroactive to January 1994.

Frank appeals the increase in his child support obligation. He believes his overtime pay should not have been used to calculate his child support obligation. He

states his overtime is inconsistent and burdensome. Generally, overtime pay should be included in a parent's net monthly income, unless it is uncertain or speculative. *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992).

In the present case, Frank presented no evidence to show his overtime was uncertain or speculative. Frank's pay stubs showed he was receiving overtime. A court 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). We agree with the district court that the most reliable evidence presented here showed Frank received overtime pay.

Frank also contends the district court should not have made the increase in his child support obligation retroactive. Under Iowa Code section 598.21(8), an increase in child support may be made retroactive to the date the notice of the pending petition for modification is served on the opposing party. We affirm the decision of the district court making the increase in child support retroactive to January 1994, when Frank received notice of Diana's application to modify.

Diana seeks attorney fees for this appeal. We determine Frank should pay $500 for Diana's attorney fees for the appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Frank.

AFFIRMED.