IN THE COURT OF APPEALS OF IOWA

No. 9-332 / 98-1004
Filed August 27, 1999

Upon the Petition of KATHRYN IRENE HOPE,
Petitioner-Appellee,

And Concerning
ROBERT GALE MARCUM,
Respondent-Appellant.

FILED
AUG 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

The respondent appeals various provisions of a district court order on petitioner's action to establish paternity and custody. **AFFIRMED.**

Kolleen K. Samek, Des Moines, for appellant.

Sandra L. Murphy, until her withdrawal, and then Diane Dornburg of Legal Aid Society of Polk County, Des Moines, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Robert Marcum appeals various provisions of a district court order on Kathryn Hope's action to establish paternity and custody. Robert contends the district court erred in awarding retroactive child support of $20,000 and for not deviating from the child support guidelines. We affirm.

Nicole Joann Hope was born in October of 1983. Her sister, Miranda Kay Hope was born in January of 1985. Robert and Kathryn were never married to each other. Robert was married at the time of Nicole and Miranda's births and has five other children, two with his first wife and three with his second wife.

Robert visited the children in the hospital following their births and, on Kathryn's initiative, visited with the children at his place of work. Robert lost contact with Kathryn in 1985 and remained out of contact with her despite her efforts to locate him. Robert did not make any child support payments to Kathryn and, over the years, she was forced to seek financial assistance from her mother and brother.

Robert renewed contact with Kathryn in late 1995, and lived with her and the children for five months. After moving out of Kathryn's home, he provided some support for the children and exercised visitation for a time before discontinuing contact with the children in December of 1996, pending a judicial determination of paternity.

In March of 1997, Nicole and Miranda's mother, Kathryn, filed a petition to establish paternity and support against Robert. Paternity blood testing results indicate

Robert is the biological father of Nicole and Miranda. In May of 1998, a decree was entered establishing the paternity of the children and ordering Robert to pay $300 per month for current support and a total of $20,000 for retroactive support obligations dating from the children's births.

Robert appeals.

I. STANDARD OF REVIEW. Our scope of review is de novo. Iowa R. App. P. 4. We have a duty to 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). In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

II. AWARD OF CHILD SUPPORT. Robert contends the district court erred in awarding retroactive child support of $20,000 and for not deviating from the child support guidelines. He complains these amounts are unfair and asks us to reduce the retroactive child support award from $20,000 to $975 and the current child support award from $300 per month to $75 per month.

Parents have a legal obligation to support their children. *Dept. of Human Services v. Poggenpohl*, 522 N.W.2d 118, 119 (Iowa App.1994); *Hartman v. Stassis*, 504 N.W.2d 129, 134 (Iowa App. 1993) (citing *In re Marriage of Fleener*, 247 N.W.2d 219, 221 (Iowa 1976)).

The determination of paternity cannot be viewed as prospective only. *Jenkins v. Palmer*, 62 F.3d 1083, 1087 (8th Cir. 1995). It has been determined Robert is the biological father of Nicole and Miranda, and thus, the children's dates of birth are when Robert's obligation to support the children began to accrue. *See id.; Dep't. of Human Services ex rel. Hammons v. Burge*, 503 N.W.2d 413, 416-17 (Iowa 1993) (date of birth is logical starting point for reimbursement of past support paid by the State).

The child support guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result. Iowa Code § 598.21(4)(a) (1997). There is a rebuttable presumption the amount of child support determined according to our guidelines is the correct amount of child support to be awarded. *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992). The district court is vested with discretion to adjust child support awards upward or downward as necessary to provide for the needs of the children and to do justice between the parties under the special circumstances of each case. *Toftee*, 494 N.W.2d at 695. To justify a departure from the guidelines, the court must make written findings the scheduled amount would be "unjust or inappropriate" under the criteria established by this court. Iowa Code § 598.21(4)(a).

A. Retroactive Child Support. Robert maintains it is unfair to "punish" him by saddling him with a substantial retroactive child support award rather than making Kathryn bear the responsibility for not seeking legal action to establish paternity at an

earlier date. He also argues the child support should be retroactive to December of 1995, not to the children's births, because that is when Kathryn notified Robert the children were his and Robert accepted the children as his own. We disagree.

Robert cites no authority for his proposition the retroactive child support award constitutes "punishment." To the contrary, the object and purpose of the laws governing the imposition of child support have authorized courts to enforce the legal duty of support between parent and child. *Hartman*, 504 N.W.2d at 134 (citing *In re Marriage of Carney*, 206 N.W.2d 107, 112 (Iowa 1973)). These principles which guide the determination of child support remain the same regardless of the form of the action brought to collect it. *Id.* (citing *Moen v. McNamara*, 272 N.W.2d 438, 439 (Iowa 1978)).

Furthermore, the record does not support Robert's contention it is unfair to award child support retroactive to the dates of birth of the children. Robert had notice of the claim he was Nicole and Miranda's father at the time of their births. The district court specifically found Robert went to the hospital to see the children after their births and Kathryn took the children to Robert's work so he could visit with them. The district court also found the Child Support Recovery Unit attempted to initiate a child support action against Robert following Nicole's birth, but did not take further action after Robert's wife made threats. The district court further found Robert remained out of contact with Kathryn for years despite her efforts to locate him. Under these circumstances, we find the district court's award of retroactive

child support is not inequitable. *See, e.g., State ex rel. Schaaf v. Jones*, 515 N.W.2d 568, 570-71 (Iowa App. 1994) (not inequitable to award child support retroactive to date putative father had notice of claim he is child's biological father).

B. Deviation From Child Support Guidelines. Robert contends the district court erred in not deviating from the child support guidelines. He argues his financial obligation to five other children and the fact Kathryn's net income is higher than his justifies a downward departure from the amount of child support determined by the guidelines. We disagree.

It is undisputed that the district court properly considered all relevant factors in arriving at the parties' respective net monthly incomes. Thus, Robert's obligation to his other children was considered when the district court set the amount of monthly child support. The only issue is whether the district court should have deviated from the child support guidelines in setting support.

There is a rebuttable presumption the child support calculated in compliance with the guidelines is correct. *In re Marriage of Thede,* 568 N.W.2d 59, 61 (Iowa App. 1997). Any request to deviate from this amount should undergo careful scrutiny. Our supreme court has stated:

> It must be remembered that impetus for the guidelines came from the federal and state legislatures and the amounts were fixed only after exhaustive study of suggestions invited from all known public and private interests. . . . The guidelines must therefore be respected as carefully considered social determinations.

In re Marriage of Nelson, 570 N.W.2d 103, 108 (Iowa 1997). Other familial obligations do not automatically justify a departure from the guidelines. *State ex rel. Reaves v. Kappmeyer,* 514 N.W.2d 101, 105 (Iowa 1994) (citing *Gilley v. McCarthy,* 469 N.W.2d 666, 668-69 (Iowa 1991)). Such expenses are, however, germane in determining ability to pay and whether a strict application of the guidelines will result in substantial injustice. *Id.*

Robert knew of the children's existence and had notice of the claim he was their father at the time of their births. He left Kathryn to be the sole provider of support for the children throughout their lives, avoided contact with Kathryn and the children for years and offered no financial assistance until providing a small amount of support recently. Kathryn struggled to provide for the children having to borrow money from family members and accepting public assistance. We have carefully reviewed the district court's reasoning in refusing to deviate from the child support guidelines and conclude that reasoning was proper. Under these circumstances, it is not a substantial injustice to order Robert to pay child support at the guideline amount.

For these reasons, we affirm.

AFFIRMED.