FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-611 / 93-323

IN RE THE MARRIAGE OF SUSAN KAY BAHR AND MICKEY MELVIN BAHR

Upon the Petition of
SUSAN KAY BAHR,

Appellee,

And Concerning
MICKEY MELVIN BAHR,

Appellant.

Appeal from the Iowa District Court for Dubuque County, R. J. Curnan, Judge.

Mickey Melvin Bahr appeals a modification of the parties' dissolution decree increasing his child support obligation. **AFFIRMED AS MODIFIED.**

Eric Borseth of Borseth and Holmes, Pleasant Hill, for appellant.

Robert L. Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

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

HUITINK, J.

This marriage was dissolved in 1979. Susan was awarded custody of the parties' only child, and Mickey was ordered to pay $300 per month child support. At the time of the decree Mickey earned $28,862 annually. Susan was a part-time employee at a local bank earning $3.39 per hour. Mickey's present monthly income is $2695. Susan's net monthly income is $1093.

The trial court granted Susan's application to modify Mickey's child support obligation and ordered him to pay $601 per month beginning January 1993. The trial court noted Mickey's significant history of overtime earnings but did not include overtime compensation in its calculation of Mickey's gross monthly income. The trial court observed it had no way of knowing whether Mickey would receive overtime in the future and that the factors controlling its availability were far outside of Mickey's control. The trial court, however, ordered the amount of child support awarded would be subject to annual adjustments according to the following formula:

> On or before May 1, 1994, and each year thereafter for which child support was an obligation in the prior annual year, the Respondent shall file with the Clerk of this Court documentation of his income for the last annual year. Respondent shall then further pay to Petitioner for the support of said child a sum computed pursuant to the following formula: 22.5 percent of 70 percent of the difference between Respondent's gross annual income for the prior fiscal year and the sum of $42,400.00. Payment of this amount may be made by paying 13 percent (1/8) of this amount each month with Respondent's regular child support payments

> commencing in the month of May and continuing through December. After the final annual year in which child support was due, said payments shall be prorated based upon the time the Respondent's child support obligation terminated and shall, in that final year, be paid within 60 days. So long as child support payments on such overtime wages are timely paid in accordance with this paragraph, no interest shall run thereon.

This formula was clearly intended to increase Mickey's child support if he receives future overtime wages.

Mickey contends the district court erred by including this formula in its decree. He also contends the trial court's award of attorney's fees was an abuse of discretion.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14.

Overtime compensation is included in gross income for purposes of computing child support under Iowa's child support guidelines. In re Marriage of Brown, 487 N.W.2d 331, 333 (Iowa 1992). The exclusion of overtime compensation from gross income requires the district court to make specific findings that overtime compensation is speculative or uncertain. Id.

The record contains abundant evidence supporting the district court's specific findings that future overtime compensation is speculative. We agree with the decision to exclude Mickey's overtime compensation from his gross income. We, however, disagree with the trial court's decision to include the foregoing formula in its modification order.

As stated earlier, the formula was intended to include future overtime compensation regardless of then existing circumstances. Since Mickey's receipt of future overtime is speculative, its inclusion in future gross income conflicts with the standard set forth in Brown and the specific factual determinations made on this issue. Moreover, its application may result in a modification of Mickey's child support obligation without the required proof of a substantial change of circumstances.

The district court correctly applied the child support guidelines in this case. The resulting award is presumptively adequate in the absence of circumstances not found in this record. If Mickey or Susan experience a change in their financial circumstances either may file for a modification of child support. We are convinced the modification process with its attendant substantive and procedural guarantees offers a greater likelihood of an equitable adjustment of support than does the use of complex and self-effectuating formula clauses.

The district court ordered Mickey to pay $400 of Susan's trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney's fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show the trial court abused its discretion. Id. The award of fees was well within the trial court's discretion and will not be disturbed on appeal. Each party shall pay his or her

own appellate attorney's fees, and the costs shall be equally assessed.

AFFIRMED AS MODIFIED.