

IN THE COURT OF APPEALS OF IOWA

No. 7-104 / 96-0936

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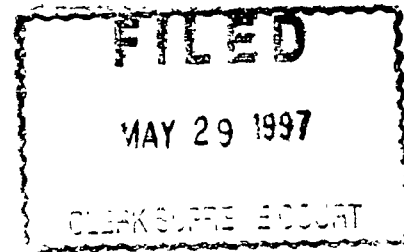
STATE OF IOWA ex rel.,
KEARSTIN NICHOLS,

Appellee,

vs.

MELVIN D. BRYSON,

Appellant.



Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Defendant appeals from the district court order requiring him to pay current and accrued child support. **AFFIRMED.**

Robert A. Nading II of Nading Law Firm, Ankeny, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Mitchell K. Mahan, Assistant Attorney General, for appellee.

Considered by Habhab, C.J., and Streit, J., and Hayden, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

HAYDEN, S.J.

Respondent Melvin Bryson appeals the decision of the district court determining his current and accrued child support obligation. We affirm.

The State of Iowa instituted proceedings against respondent under the Uniform Support of Dependents Law, Iowa Code chapter 252A, seeking to establish paternity and current and accrued child support. After respondent did not contest the State's motion for partial summary judgment on the issue of paternity, trial proceeded on the support obligation.

The trial court, relying on respondent's 1994 W-2 form, determined his net monthly income to be \$4,304.08. The court found the custodial parent had net monthly imputed income of \$554.80. The court set respondent's monthly child support obligation at \$848 and entered judgment for \$17,256.50 in accrued support, which represented public assistance the State had paid to the custodial parent.

Because this is a case in equity, Iowa Code § 252A.6(1) (1995), our review is de novo. Iowa R. App. P. 4. We have the duty to examine the entire record and adjudicate anew properly-presented issues. *State ex rel. Blackwell v. Blackwell*, 534 N.W.2d 89, 90-91 (Iowa 1995). Although we are not bound by the trial court's findings, we give them weight and are especially deferential to the court's assessment of the credibility of witnesses. *Metropolitan Jacobson Development Venture v. Board of Review*, 524 N.W.2d 189, 192 (Iowa 1994). We do so because we recognize the

trial court's firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

Respondent argues the trial court improperly relied on his earning capacity rather than his actual income and the amount of income found was excessive. Respondent also argues special circumstances warrant deviating from the child support guidelines and he should not be required to repay the full amount of public assistance the custodial parent received.

We conclude based on our review of the record the trial court did not rely on earning capacity. Respondent has almost always been in business for himself and has launched a number of different ventures of varying degrees of success. Only once in his life has he received a paycheck for hours worked. Faced with this unpredictable income stream, and with the sketchy evidence of respondent's income for 1995, the trial court relied on the most reliable of the evidence presented: the payment to corporate officers indicated by respondent's W-2 form.

We also conclude the amount of income set was not excessive. Respondent continues to have an ownership interest of fifty-one percent in his latest venture, a business that has been successful. He offered no concrete explanation for his opinion he would not earn as much in 1995 as he did in 1994. Given respondent's luxury assets and his high-end lifestyle, we defer to the trial court's assessment of the credibility of the testimony of respondent and his wife relating to income. Respondent bases his argument that special circumstances justify a guidelines

departure on the earning potential of the custodial parent, the income of her spouse, and the relative living expenses of that family and his own. We determine such an adjustment is not necessary. A minimal work history, coupled with speculation of potential salaries based on newspaper classified ads, does not amount to a voluntary reduction in income. Again, we credit the trial court's evaluation of the credibility of testimony regarding respondent's assets, living expenses, and income.

Lastly, we hold the order to pay the full amount of public assistance is valid. The record does not support respondent's claim that the custodial parent engaged in fraud, and the order is otherwise provided for by law. *State ex rel. Dept. of Human Servs. v. Burge*, 503 N.W.2d 413, 416 (Iowa 1993).

AFFIRMED.