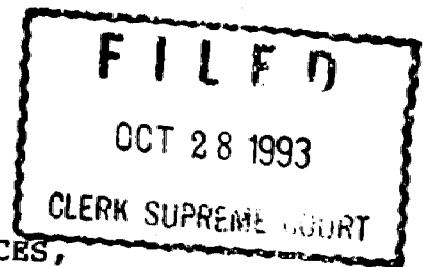


IN THE COURT OF APPEALS OF IOWA

No. 3-445 / 93-191



STATE OF IOWA ex rel. DEPARTMENT OF HUMAN SERVICES,
TYLER JON HARTEMA, A Minor, By and Through His Mother and
Next Friend, AMELIA MARTHA HARTEMA,

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Appellee,

vs.

JON R. COTTRELL,

Appellant.

Appeal from the Iowa District Court for Cerro Gordo
County, Paul W. Riffel, Judge.

Respondent appeals a decision of the district court
ordering him to pay child support pursuant to chapter 252A
of the Iowa Code. **AFFIRMED AS MODIFIED.**

J. Matthew Anderson of Laird, Heiny, McManigal, Winga,
Duffy & Stambaugh, P.L.C., Mason City, for appellant.

Bonnie J. Campbell, Attorney General, John Parmeter,
Special Assistant Attorney General, Robert R. Huibregtse,
Assistant Attorney General and Joaquin Jones, Assistant
County Attorney, for appellee.

Heard by Donielson, P.J., Schlegel, J., and Perkins,
S.J.*, but decided by Oxberger, C.J., Schlegel, J., and
Perkins, S.J.

*Senior judge from the 5th judicial district serving on
this court by order of the Iowa Supreme Court.

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PERKINS, S.J.

In a stipulation dated September 17, 1992, respondent Jon Cottrell admitted he was the father of Tyler Jon Hartema, born to Amelia Hartema on July 28, 1991. Jon and Amelia have never been married.

Amelia began receiving Aid to Families with Dependent Children (ADC) benefits on behalf of Tyler on about August 1, 1991. She received benefits until June 30, 1992, although she started working again in January 1992. Amelia was employed at IMI Cornelius through Express Services. Her monthly income there was about \$1,075. Amelia was transferred by Express Services to General Foods, where her monthly income was about \$1,092. She voluntarily quit this job in September 1992. She then reapplied for ADC benefits.

Jon is employed by Curries Company as a coil line operator. His annual income is about \$27,081, and his net monthly income is \$1,684. Jon is married and has three minor children from his marriage. Jon's wife is unable to work because of a partial disability in her shoulder.

The Iowa Department of Human Services filed a petition seeking to establish Jon's child support obligation and to make him responsible for accrued support and dependent health insurance. An officer of the child support recovery unit testified a total of \$3,414 had been paid in ADC benefits on behalf of Tyler.

The district court entered its decision on December 31, 1992. The court applied the child support guidelines for one child. The court did not impute any income to Amelia. Jon was ordered to pay child support of \$434 per month. Using this figure, the total amount of accrued support was determined to be \$7,378. Jon was ordered to pay the accrued support in installments of \$25. The court noted Jon was already providing health insurance for Tyler, and he was ordered to continue to do so. Jon appealed.

Our scope of review in this equity action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Jon's child support obligation must be calculated using the uniform child support guidelines, which were prescribed by the supreme court pursuant to Iowa Code section 598.21(4). We note that effective July 1, 1993, section 598.21(4) was amended to add the following language:

It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following: emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case; and in determining monthly child support payments, consider other children for whom

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either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

(Emphasis added.)

The general rule is that an amendment to a statute will be given prospective application only, unless it appears the legislature clearly intended it to be applied retrospectively. Vinson v. Linn-Mar Community Sch. Dist., 360 N.W.2d 108, 121 (Iowa 1984). An exception exists when a statute relates solely to a remedy or procedure; such statutes are applied both prospectively and retrospectively. State ex rel. Leas v. O'Neal, 303 N.W.2d 414, 419 (Iowa 1981). Substantive law is that part of the law which creates, defines, and regulates rights. State ex rel. Turner v. Limbrecht, 246 N.W.2d 330, 332 (Iowa 1976). Procedural law is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective. Id.

We conclude the present amendment to section 598.21(4) should be considered procedural because it affects only the method or procedure by which the child support guidelines are applied. Therefore, the amendment may be applied both prospectively and retrospectively. We apply this amendment to the case before us.

Jon argues that because the amendment to section 598.21(4) provides other children supported by a parent should be considered, the amendment should be construed to

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mean that the district court should have used the child support chart for four children and divided that amount by four to determine Jon's child support obligation for Tyler.

Our supreme court has stated that the trial court should select the chart that applies to the number of children who live in the custodial parent's household and can legally claim both parties as parents. Gilley v. McCarthy, 469 N.W.2d 666, 668 (Iowa 1991). This is due to the fact that children living in separate households do not share expenses. Id.

We conclude the chart for four children would be inappropriate in this case because Tyler lives in a household separate from Jon's three children by his marriage. Thus, there are no shared expenses for the four children. Furthermore, our construction of the language in the amendment to section 598.21(4) leads us to a different interpretation.

In the amendment the legislative language "both of the following" implies that two items follow the colon. The two items are separated by a semicolon. First, the guidelines should be applied in a just and appropriate manner based on the individual facts of a case. Second, courts should consider other children for whom either parent is legally responsible for support and other court-ordered child support obligations.

By placing a parent's legal responsibility to support other children within the same item as court-ordered child

support obligations, the legislature is implying that these are similar concepts. We construe the language of the amendment to mean Iowa courts should consider a parent's legal responsibility to support other children in a manner similar to court-ordered child support obligations.

Child support actually paid pursuant to a court or administrative order is deducted from the noncustodial parent's income in determining net monthly income. See In re Marriage of Gulsvig, 498 N.W.2d 725, 727 (Iowa 1993). We conclude the amendment to section 598.21(4) requires us to make a similar deduction based on the number of other children the noncustodial parent is supporting.

We realize that a noncustodial parent's support of other children has been considered only in determining his or her ability to pay. Gilley, 469 N.W.2d at 668; In re Marriage of Ladely, 469 N.W.2d 663, 665 (Iowa 1991); State ex rel. Epps v. Epps, 473 N.W.2d 56, 58 (Iowa 1991); State ex rel. Nicholson v. Toftee, 494 N.W.2d 694, 698 (Iowa 1993). However, we believe the clear intent of the legislature in amending section 598.21(4) is to change this practice and to compel the interpretation we have set out above.

The supreme court has noted that serial support obligations may create problems for child support obligors. See Ladely, 469 N.W.2d at 665. Also, as was noted in Nicholson, it is as destructive to the children's welfare as to the noncustodial parent to fix child support

amounts that impoverish the provider. 494 N.W.2d at 697. We conclude the intent of the present legislation is to address these problems and to provide some balance between serial households and a child support obligor.

In the present case Jon's monthly income is \$1,684 after deductions for taxes and dependent health insurance. His wife is disabled and has no income or earning capacity. Under the child support guidelines, he would be required to pay \$733 per month for the support of the three children in his marriage. We find \$733 should be deducted from Jon's income in order to determine his net monthly income. For purposes of calculating Jon's child support obligation for Tyler, we determine his net monthly income is \$951.

A court may figure child support under the guidelines by including or considering the amount by which a parent has voluntarily reduced his or her income. State ex rel. Lara v. Lara, 495 N.W.2d 719, 722 (Iowa 1993). In this case, Amelia voluntarily reduced her income by quitting her job. Her average monthly income from her last two jobs was \$1,083. We attribute to her the amount of \$758 as her net monthly income.

Using these figures and the chart for one child, we conclude Jon's child support obligation for Tyler should be \$223 per month.

Jon also argues that application of the child support guidelines is unjust and inappropriate in this case. The

amendment to section 598.21(4) requires courts to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case.

There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991).

Jon's argument is based on the district court's application of the guidelines to require him to pay \$434 per month in support for Tyler. We have applied the guidelines to require Jon to pay \$223 per month for Tyler's support. We conclude our application of the guidelines is just and appropriate based on the facts in this case. By paying \$223 per month for the support of Tyler, Jon will have \$1,461 left each month for the support of himself, his wife, and three other children.

Finally, Jon contends that if his child support obligation is modified, the judgment against him for accrued child support should be modified. Since we have modified Jon's child support obligation, we agree that the judgment for accrued child support should be modified.

Reimbursement for past support paid by the State begins to accrue on the date of the child's birth. See State ex rel. Hammons v. Burge, No. 92-1222 (Iowa July 21, 1993). Child support payments of \$223 for the seventeen months from Tyler's birth until the district court decree equals

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\$3,791. While we have modified the amount Jon is ordered to reimburse to the State, we determine Jon may still pay the amount of accrued support in installments of \$25 per month.

We have modified the district court's decree to order Jon to pay \$223 per month for Tyler's support and have reduced the judgment against Jon for accrued child support to \$3,791. Costs of this appeal are assessed to the State.

AFFIRMED AS MODIFIED.