

IN THE COURT OF APPEALS OF IOWA

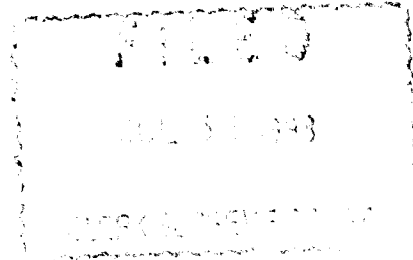
No. 8-297 / 97-1691

Filed July 31, 1998

**IN RE THE MARRIAGE OF JOHNETTE
MICHALEK AND BRENDAN MICHALEK**

Upon the Petition of
JOHNETTE (MICHALEK) GIBSON,
Appellee,

And Concerning
BRENDAN MICHALEK,
Appellant.



Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

Respondent appeals the district court's denial of his application to modify the
parties' dissolution decree and the court's granting petitioner's application requesting
an increase in child support. **AFFIRMED AS MODIFIED.**

William D. Olson of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P.,
Grinnell, for appellant.

Roger W. Sunleaf of McNeil & Sunleaf, Montezuma, for appellee.

Considered by Cady, C.J., Vogel, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

Brendan and Johnette Michalek were divorced in March 1986. In the original decree, Johnette was granted physical custody of the couple's two boys and Brendan was ordered to pay child support of \$150 per month, based upon Brendan's net income of \$800 per month and Johnette's income of \$325 per month. Johnette filed a petition to modify child support based on Brendan's increased income. The court increased Brendan's child support payments to \$495.75 per month and ordered him to pay \$500 toward Johnette's attorney fees. Brendan appeals.

Our review of an action to modify child support is de novo. *In re Marriage of Bolick*, 539 N.W.2d 357, 359 (Iowa 1995). We give weight to the findings of the trial court, but are not bound by them. *Id.*

We note at the inception that the parties, prior to trial, stipulated for child support purposes Brendan's net monthly income was \$1215.61. This is the amount that appears on Brendan's child support guideline worksheet and, in arriving at that amount, there is a deduction from his gross income of \$2365.92¹ which represents the annual medical insurance premiums for his dependents. Although there is some reference in the record as to insurance costs, we are unable to find any attempt by either of the parties to either withdraw the stipulation or to modify the amount agreed

¹ We mention this amount for from an examination of Brendan's and Johnette's worksheet the only difference in their computations in determining Brendan's net monthly income is the inclusion by him of the amount of \$2365.92 as a deduction from his gross income and a failure by her to include that amount as a deduction in her computations.

upon. We believe under the circumstances here that the stipulated amount of \$1215.61 represents Brendan's net monthly income and should be used in determining his support obligation. The decree is modified accordingly.

Brendan next argues the court erred in its determination of Johnette's income of \$362.12 per month through her at-home day care. Brendan argues Johnette is capable of minimum-wage employment outside the home, and minimum-wage pay at forty hours per week should be imputed to her. In the alternative, he argues Johnette could make more money by taking in more children at her day care.

In addition to the two children from her previous marriage, Johnette has two children under the age of four from her new marriage. The younger child, age eighteen months, has a severe milk protein intolerance and his food intake must be carefully monitored. She has a child care business in her home. She watches two children other than her own. Under the circumstances here, we cannot say that Johnette is under-employed by watching four small children. If she worked outside the home at a minimum-wage job, any economic benefit would be outweighed by the costs of day care. Accordingly, we decline to impute a minimum-wage income to her for the purposes of calculating child support. *See In re Marriage of Swan*, 526 N.W.2d 320, 324 (Iowa 1995).

The child support order of the district court is modified to reflect Brendan's net monthly income of \$1215.61. We agree with the trial court that Johnette's net monthly income is \$362.12. Applying these figures to the guidelines, Brendan is

ordered to pay Johnette \$425.46 per month child support. We modify the decree accordingly. We find no merit in appellant's contention that the district court should not have allowed Johnette's attorney fees of \$500. Except as modified herein, we affirm the trial court in all other respects. Costs assessed one-half to each party.

AFFIRMED AS MODIFIED.