IN THE COURT OF APPEALS OF IOWA

No. 6-773 / 95-2048

000340

FILED
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CLERK SUPREME COURT

STATE OF IOWA ex rel., COREY MICHAEL AINSWORTH, Minor Child,

Petitioner-Appellee,

vs.

JEFFREY M. WEYEN,

Respondent-Appellant.

Appeal from the Iowa District Court for O'Brien County, Charles H. Barlow, Judge.

On appeal from the entry of an order adjudicating his paternity for a minor child and establishing child support, appellant argues the district court should have granted him a larger deviation from the child support guidelines. **AFFIRMED.**

John M. Bjornstad of Cornwall, Avery, Bjornstad & Scott, Spencer, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Deputy Attorney General, Robert R. Huibregtse, Assistant Attorney General, and Dianne Wallwey, Assistant County Attorney, for appellee.

Heard by Habhab, C.J., and Streit and Vogel, JJ.

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HABHAB, C.J.

Jeffrey Weyen and Candace Franke were acquainted and shared a sexual relationship in 1979. Candace became pregnant and informed Jeffrey of her pregnancy. Shortly thereafter the relationship ended. Candace gave birth to Corey on March 2, 1980. Jeffrey joined the United States Air Force in 1979 and married Sharon Weyen on March 25, 1980.

While stationed in California, Jeffrey was served with a U.R.E.S.A. action that Candace had commenced to recover support for Corey. On the hearing date, Jeffrey was informed by his attorney the action had been dismissed. Jeffrey had doubts about whether he was Corey's father and considered the matter concluded. From the time the case was dismissed in 1980 until the Child Support Recovery Unit became involved in 1993, Jeffrey had no further contact concerning Corey nor made any attempt to provide support for him.

Candace and her spouse Leland Franke have provided all of Corey's support, with the exception of two months of public assistance received in 1992. Candace and Leland also have another child. Candace was employed as a laborer until recent years when she began suffering from problems with carpel tunnel syndrome. As a result, she is limited to part-time employment. The record reflects she grosses $6 per hour and works approximately 22 to 25 hours per week. Her net monthly income is less than $500. Leland's net monthly income is approximately $1000.

Jeffrey and Sharon have three children born in 1981, 1982, and 1988. The youngest child, Anthony, suffers from a serious kidney disorder. He also has asthma, seizures which require the medical attention of a brain specialist, and he suffers complications from a deficient immune system. Although insurance covers the majority of Anthony's medical expenses, Jeffrey and Sharon incur approximately $600 per year in uninsured medical expenses for Anthony. However, due to the uncertainty of Anthony's condition, his future uninsured medical expenses may be staggering.

On May 27, 1993, a petition to establish paternity and current and accrued support was filed. The Iowa Department of Human Services sought reimbursement of $386 in funds it had expended on behalf of the child and Candace sought reimbursement of $11,285 for past support and $305 per month for future child support.

DNA paternity testing was done and the probability of Jeffrey's paternity of Corey was 99.95%. A trial was held on August 10, 1995, and Jeffrey did not resist an adjudication that he was the father. He did argue, among other things, his extraordinary medical expenses for Anthony warranted an adjustment or deviation from the application of the child support guidelines. He requested his child support be set at $75 per month and no back child support be ordered.

The court filed a ruling and order for support on October 27, 1995. The court found Jeffrey was Corey's father and owed a duty of support and was able to and

should pay reasonable support. Utilizing the child support guidelines effective July 1, 1995, and allowing Candace and Jeffrey qualified additional dependency deductions for their other children, the court concluded Jeffrey's support obligation under the guidelines was $305 per month.[1] The court allowed Jeffrey an additional $132 per month deduction for medical and cost of living expenses and deviated from the guidelines by ordering Jeffrey to pay only $272 per month in support commencing November 1, 1995.

The court ordered the adjustment to avoid substantial injustice to Jeffrey because of the extraordinary medical expenses incurred on behalf of his youngest son and because of the substantial expenses and debts he had incurred in his present family situation. *See* Iowa Court Rules, Child Support Guidelines, p. 306 (1995) (the court may deviate from the guidelines upon finding their application would be unjust and substantial injustice would result to the payor). The court also deviated from the guidelines in ordering Jeffrey to pay accrued support retroactive only to the approximate date of the filing of the petition rather than to the date of Corey's birth. Jeffrey was ordered to pay $7984 in accrued support to be paid in monthly installments of $28.

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[1] In calculating Jeffrey's gross income, the trial court noted that Jeffrey's financial statement "shows no outlay for house payment or rent which could be because they are furnished government quarters or quarters allowance which may not be reflected in Jeffrey's gross income."

On appeal, Jeffrey claims the court should have granted him a larger deviation from the child support guidelines. He alleges he did not know he was Corey's father for thirteen years and requiring him to pay $300 per month in current and accrued support provides Candace with an income surplus and is a hardship on his family. He requests his support obligation be reduced to $100 per month.

As the child support obligation involved in this action arises from an equitable order, our review is de novo. Iowa R. App. P. 4; *State ex rel. Heisdick v. Balch*, 533 N.W.2d 209, 211 (Iowa 1995). Under such review our duty is to examine the entire record and adjudicate anew the rights on issues properly presented. *Id.*

"The purpose of the guidelines is to provide for the best interest of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes." Iowa Court Rules, Child Support Guidelines, p. 305. Generally, the child support guidelines are strictly followed in determining a parent's child support obligation. *State ex rel Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa App. 1995). The scheduled amount, however, is not unassailable, but may be increased or decreased if the court finds it is necessary to provide for the needs of the children or do justice between the parties under special circumstances of the case. *Id.*; *see* Iowa Code § 598.21(4)(a).

Jeffrey contends that as the facts of this case resemble those set forth in *State ex rel. Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994), further deviation from the support guidelines is warranted in fixing his support amount. We disagree

and affirm the trial court, finding that the facts of this case are distinguishable from *Kappmeyer*.

In *Kappmeyer*, our supreme court determined a deviation from the guidelines was warranted in light of the fact "[Kappmeyer] did not know of [the child's] existence until this action was brought by the State almost seven years after [his] birth." In the case at hand, Candace informed Jeffrey of her pregnancy and that he was the child's father. Candace testified thereafter Jeffrey "didn't have [anything] to do with us." In 1980, Jeffrey was informed the State dismissed a paternity action alleging he was Corey's father. Jeffrey then erroneously took the position he was not Corey's father. As the result, Candace has supported Corey without Jeffrey's assistance since his birth.

In our de novo review of the record, we find the trial court properly fixed Jeffrey's child support obligation at $272 per month. Jeffrey's request for further deviation is denied.

AFFIRMED.