IN THE COURT OF APPEALS OF IOWA

No. 3-143 / 92-1147

FILED
OCT 28 1993
CLERK SUPREME COURT
000491

STATE OF IOWA, ex rel., NATHAN SCOTT REAVES, A Minor Child by CINDY REAVES,
Petitioner-Appellant,

vs.

CHRIS KAPPMEYER,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge.

The State appeals a district court's order setting child support. **AFFIRMED AS MODIFIED.**

Bonnie J. Campbell, Attorney General, John M. Parmeter, Assistant Attorney General, Kay Delafield, Assistant Attorney General, and James A. Lally, Assistant County Attorney, for appellant.

David James Hanson, Hofmeyer, Anthony, Hurley & Hanson, Fayette for appellees.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J. 000492

On October 27, 1989, the State filed a petition alleging Chris Kappmeyer was the father of Nathan Reaves and requesting the court to order child support pursuant to Iowa Code chapter 252B. Nathan Reaves was born to Cindy Reaves on November 30, 1982. Chris filed an answer denying paternity of the child. Blood tests were performed which concluded that there was a 99.33% chance that Chris is Nathan's father.

Cindy did not tell Chris she was pregnant because she intended to give the child up for adoption. After Nathan was born she decided to keep him. However, Cindy did not know where Chris lived and she heard he had married, which apparently made her reluctant to come forward. Cindy received Aid to Families with Dependent Children (ADC) benefits for at least four years after Nathan's birth. She named Chris as the father on her application for benefits. The State did not make any effort to contact Chris.

In 1989 Cindy discovered Chris's address. She took this information to the Child Support Recovery Unit. The State then initiated the present action against Chris to establish paternity and child support. The State decided not to attempt to require Chris to repay it for ADC payments Cindy had previously received because of the length of time involved.

Chris is employed by FECO, Inc. as a service technician for applying farm fertilizers. He earns $17,784, and has

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net monthly income of $1,232. Chris also farms as a hobby and generally has no income from farming. Chris married in December 1982, and has three children from his marriage. His wife is employed full-time. She earns about $10,400, and has net monthly income of about $607.

Cindy has an associate degree in nursing. She works at Covenant Medical Center in Waterloo, where she earns about $28,032, and has net monthly income of $1,605. She also receives about $433 per month from her live-in boyfriend for household expenses. Cindy also has a daughter who lives with her.

The district court issued its decision on June 10, 1992. The court found there was sufficient evidence to establish Chris was the father of Nathan. The court concluded the child support guidelines should not be applied because it would result in substantial injustice to Chris primarily because of the unnecessary elapse of so long a period of time before the claim of paternity was made. The court order Chris to pay child support of $50 per month. The State has 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).

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). A court cannot vary the amount of the child support without a written finding that the guidelines would be unjust or inappropriate. In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

In the present case, we find the lapse of time before the claim of paternity was made is an insufficient reason to deviate from the guidelines. Actually, the lapse of time worked to Chris's benefit, because he was not required to pay child support during this time, and the State is not seeking back child support in this case. We conclude the child support guidelines should be applied.

In a case filed this month, in State ex rel. Department of Human Services v. Cottrell, No. 93-191 (Iowa App. Oct. 28, 1993), we noted that section 598.21(4) had been amended effective July 1, 1993. We determined this amendment should be applied prospectively and retrospectively. Id. The amendment requires us to consider a parent's legal responsibility to support other children in a manner similar to court-ordered child support obligations. Id. As with court-ordered child support, a deduction based on the number of other children the noncustodial parent is supporting may be made to a noncustodial parent's net monthly income. Id.

In the present case, Chris's net monthly income is $1,232 and his wife's net monthly income is about $607. Under the child support guidelines, Chris would be required to pay $473 per month for the support of the three children in his marriage. We deduct $473 from Chris's income in order to determine his net monthly income for our calculations. For purposes of determining Chris's child support obligation for Nathan, we use $759 as Chris's net monthly income.

Cindy has net monthly income of $1,605 from her employment. The money she receives each month from her boyfriend goes towards household expenses, and should not be considered income to Cindy. Using the chart for one child, we find Chris should pay child support of $149 per month for Nathan.

Except for this modification of the amount of child support Chris should pay for Nathan, we affirm the decision of the district court. Costs of the appeal should be assessed to Chris Kappmeyer.

AFFIRMED AS MODIFIED.