IN THE COURT OF APPEALS OF IOWA

No. 6-011 / 94-2152

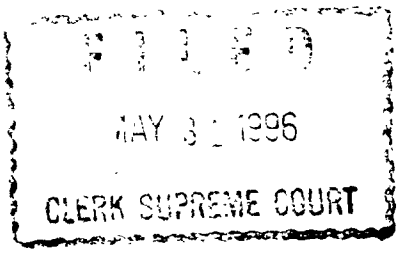
IN RE THE MARRIAGE OF VIRLENE K. PINGEL AND ROBERT E. PINGEL

Upon the Petition of
VIRLENE K. PINGEL,

Appellee/Cross-Appellant,

And Concerning
ROBERT E. PINGEL,

Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Webster County, Louie F. Beisser, Judge.

Respondent appeals, and petitioner cross-appeals, various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

James W. McCarthy, Fort Dodge, for appellant.

Jerry L. Schnurr III, Fort Dodge, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ. Habhab and Vogel, JJ., take no part.

PER CURIAM

In this case, the husband has appealed on the issue of alimony. The wife has cross-appealed on the issues of alimony, child support, and the lifting of a restraining order. We affirm as modified on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Virlene and Robert Pingel were married in 1976. They have three minor children. Robert is employed as a supervisor at Silgan Containers, where he has annual income of about $25,800, and net monthly income of $1,534. Virlene did not work for wages outside the home. She did sometimes help her father's construction business by operating a backhoe.

The district court issued a dissolution decree for the parties on September 9, 1994. The court awarded the parties joint legal custody of the children, with Virlene having primary physical care. Robert was ordered to pay child support of $667 per month. Virlene was awarded rehabilitative alimony of $350 per month for a period of five years. The court lifted a prior restraining order between the parties.

I. Robert claims Virlene is not entitled to alimony. He states that she received income for operating a backhoe in the past, and could continue to do so in the future. Additionally, he claims he does not have sufficient income to pay alimony in addition to his child support obligation. In her cross-appeal, Virlene claims Robert voluntarily reduced his income by quitting his part-time job as a school bus driver. She asks to have her alimony increased to $400 per month for a period of ten years.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *Id.* at 110-111.

Robert's combined child support and alimony obligation will require him to subsist on $517 per month. The simple fact of the matter is that there is not enough money to accommodate an alimony award. Moreover, nothing in the record suggests that Virlene is incapable of obtaining her G.E.D. or earning a subsistence living without alimony. We therefore modify the district court's decision by eliminating Robert's alimony obligation.

II. Virlene contends Robert's child support obligation should be increased because the district court did not consider his overtime at Silgan or his income as a bus driver. A court must determine a parent's current monthly income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parent's income. *Id.*

Here, the district court found Robert's future overtime speculative. The court also found that Robert had taken a leave of absence from his part-time job as a bus driver. The court noted that Robert's child support obligation would be subject to modification if he returned to driving a school bus and his income increased

substantially. We find no reason to increase Robert's child support obligation at the present time.

III. Virlene claims the district court erred in lifting the previous restraining order. The district court awarded the parties joint legal custody of the children. The parties must necessarily be able to communicate with each other in order to share in the responsibilities of raising the children. We find no error in the court's decision to lift the restraining order.

IV. Virlene asks for attorney fees for this appeal. We determine each party should pay his or her own attorney fees for this appeal.

We affirm the district court except as we have modified by eliminating the award of alimony. Costs of this appeal are assessed to Virlene.

AFFIRMED AS MODIFIED.