FILED
NOV 27 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-541 / 89-217

STATE OF IOWA, ex rel., IOWA DEPARTMENT OF HUMAN SERVICES, REBECCA PRIOR MILLER on behalf of JOSEPH PRIOR, A Minor,

Appellant,

vs.

MARLIN DEEN,

Appellee.

Appeal from the Iowa District Court for Carroll County, Ronald H. Schechtman, Judge.

The State challenges modification of child support obligation. **AFFIRMED.**

Thomas J. Miller, Attorney General of Iowa; Gordon E. Allen, Deputy Attorney General; Mark Haverkamp, Assistant Attorney General; and Diane Tvrdik, Assistant County Attorney; for appellant.

Ronald F. Eich, Carroll, for appellee.

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

PER CURIAM

This is an appeal from a district court order modifying Marlin Deen's child support obligation by reducing it from $275 per month to $200 per month.

On May 8, 1986, the district court determined Marlin Deen was the father of Joseph Wayne Prior. His mother is Rebecca Prior. Joseph Prior was born on June 28, 1982. The district court ordered Marlin to pay past support of $12,100 and directed him to pay child support of $275 per month beginning June 1, 1986. The past support was to be paid at the rate of $100 per month. At the time of this decree, Marlin was an enlisted man in the Navy.

After 1986, Marlin left the Navy but remained in San Diego. While in San Diego, Marlin worked in several retail stores but primarily attended classes in graphic arts and took care of his child from his current marriage. Marlin's wife worked as a legal secretary. Before the modification hearing, Marlin returned to Carroll. Marlin was unemployed at the time of the hearing but his wife was employed in the Carroll County Clerk's office.

Rebecca Prior had married before the hearing. Her husband is unemployed; they were expecting a child in June 1989. She has reapplied for ADC.

On August 19, 1988, Marlin Deen filed an application for modification of support order due to a material change in circumstances.

On January 12, 1989, the district court entered its decree of modification. The court noted the total arrearage as of this date was $18,687. This amount was to continue to be paid at a rate of $100 per month. The district court modified the child support from $275 per month to $200 per month, beginning with the payment due February 1, 1989. The State appealed and Marlin Deen cross-appealed.

Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

It is well established both parents have a legal obligation to support their children. Iowa Code 598.21(4); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984).

We have reviewed the record in this case and we agree with the trial court's findings and assessment of the parties' situations. We affirm in all respects.

AFFIRMED.

Schlegel and Hayden, JJ., concur; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I would reverse this case and reinstate the $275.00 per month child support. Appellee's present financial situation is of his own making. I find In re Marriage of Vetternack, 334 N.W.2d 761, 763 (Iowa 1983), and cases cited therein, controlling.