

IN THE COURT OF APPEALS OF IOWA

No. 8-108 / 97-1195

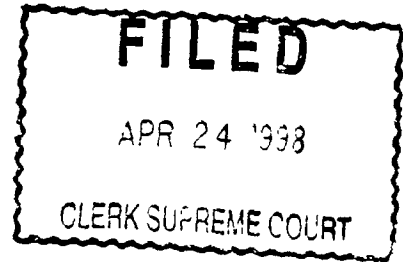
PAUL JOSEPH McDERMOTT,

Petitioner-Appellee,

vs.

REVA MARIE LYONS,

Respondent-Appellant.



Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

Respondent appeals from the district court order setting child support.

REVERSED AND REMANDED WITH DIRECTIONS.

Davin C. Curtiss of O'Connor & Thomas, P.C., Dubuque, for appellant.

Scott J. Nelson of Hammer, Simon & Jensen, Dubuque, appellee.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

PER CURIAM

This appeal arises from the trial court's decision concerning child support, entered upon remand from this court. In our earlier decision we awarded custody of the parties' minor child to petitioner and remanded "to the trial court to fix Reva's child support obligation." *McDermott v. Lyons*, No. 96-0661, slip op. at 5 (Iowa App. January 29, 1997). The trial court, without hearing or any submission of evidence, entered an order setting respondent's monthly child support obligation at \$82. Respondent appeals, arguing the trial court erred in not conducting a hearing or receiving current evidence of the parties' incomes. Petitioner argues the trial court is limited to the original court record on remand and seeks costs and attorney fees for this "improperly submitted" appeal. We reverse and remand with directions by memorandum opinion pursuant to Iowa Supreme Court rule 9.

We review equity actions de novo. Iowa R. App. P. 4. On remand for a determination of the parties' incomes and appropriate child support according to the current guidelines, a hearing or submission of current income information may be required. *In re Marriage of Smiley*, 518 N.W.2d 376, 380 (Iowa 1994). The supreme court stated the child support should be determined, "under the present record and such additional evidence of current income and expenses as may be presented by the parties." *Id.*

Respondent, in her appeal, claims the district court erred in failing to allow her to present additional evidence regarding petitioner's income. We agree. In *In re Marriage of Russell*, on appeal from our initial remand, we stated:

Judith, in her cross-appeal, claims the district court erred in failing to allow her to present additional evidence regarding David's income. We agree We intended the district court to make a determination of David's monthly income. Accordingly, we reverse this portion of the district court's judgment and remand with the following instructions. *The parties should be allowed to provide the court with current information about both parties' income so the court can calculate the appropriate child support obligation from the guidelines accurately.*

In re Marriage of Russell, 511 N.W.2d 890, 893 (Iowa App. 1993) (emphasis added).

Given the passage of time since the original trial and the small amount of evidence of respondent's actual income, we conclude the trial court erred on remand in not having a hearing to receive current income evidence. We therefore remand this matter to the trial court with directions to receive current information concerning the parties' incomes before determining respondent's child support obligation.

REVERSED AND REMANDED WITH DIRECTIONS.