IN THE COURT OF APPEALS OF IOWA

No. 1999-507 (9-764) / 99-0535
Filed March 29, 2000

Upon the Petition of
RICKIE L. HUSMANN,
Petitioner-Appellant,

And Concerning
DANA L. CARSTENSEN, n/k/a DANA L. SPILMAN,
Respondent-Appellee.

FILED
MAR 29 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, Thomas L. Koehler, Judge.

Petitioner appeals an order determining child support. **AFFIRMED AS MODIFIED.**

Matthew G. McQuillen and Marty A. Hagge of Remley, Willems, McQuillen & Voss, Anamosa, for appellant.

Tricia Spratt Fairfield of Norton & Norton, P.C., Lowden, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, J.J.

PER CURIAM.

Petitioner-Appellant Rickie Husmann and Respondent-Appellee Dana Spilman are the parents of Benjamin, born in 1995. Following a trial on Rickie's petition to determine paternity, custody, visitation, and support, the district court awarded Dana primary physical care and ordered Rickie to pay child support of $629.66 a month. The income tax dependency exemption for Benjamin was given to each parent in alternate years. Rickie on appeals contends (1) the district court did not correctly determine his net monthly income as defined by the child support guidelines and (2) he should have been given Rickie's dependency exemption in all years. Dana requests appellate attorney fees. We affirm as modified.

Our review is de novo. Iowa R. App. P. 4. Rickie is a farmer. He contends the district court was not correct when it considered only his 1997 income tax return in determining his income for purpose of applying the child support guidelines. Rickie advances that his income fluctuates from year to year and that the district court should have averaged his income over a several year period. We agree. A party with a variable income may need to have income averaged to determine "net income" for purposes of child support. *See In re Marriage of Swanson*, 586 N.W.2d 527, 529; *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa App.1996). It is equitable to average Rickie's income over three years in determining his gross monthly income as defined by the guidelines. *See In re Marriage of Crotty*, 584 N.W.2d 714, 718; *In re Marriage of Cossel*, 487 N.W.2d 679, 683 (Iowa App.1992). We also agree with Rickie that he should be allowed to claim straight-line depreciation on the equipment

purchased for use in his business. We find that Rickie's adjusted gross income over a three-year period would average out to $21,955 and Dana's would be $15,725. Their net monthly incomes, as defined by the child support guidelines, are $1418 and $1225 respectively. We modify the district court's award and set Rickie's monthly child support obligation at $319.

We find the district court's treatment of the income tax exemption for Benjamin equitable and affirm it on appeal.

Dana seeks an award of appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within our discretion. *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa App. 1999). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision. *Id.* We award no appellate attorney fees. Rickie shall be responsible for the costs on appeal. Affirmed as modified.

AFFIRMED AS MODIFIED.