FILED
JAN 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF NANCY L. MANGOLD AND LEO C. MANGOLD, JR.

Upon the Petition of	)	
NANCY L. MANGOLD,	)	
Petitioner-Appellant,	)	Filed January 26, 1983
And Concerning	)	
LEO C. MANGOLD, JR.,	)	2-317 2-67905
Respondent-Appellee.	)	

Appeal from Linn District Court - August F. Honsell, Jr., Judge.

Petitioner appeals the trial court's denial of her application alleging that respondent owed additional child support. REVERSED AND REMANDED.

Benjamin W. Blackstock of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for petitioner-appellant.

Stephen B. Jackson, Cedar Rapids, for respondent-appellee.

Considered en banc.

DONIELSON, J.

Petitioner, Nancy Mangold, appeals the trial court's denial of her application alleging that respondent, Leo Mangold, owed additional child support. The parties' 1973 dissolution decree included a complicated provision for adjustment of the respondent-husband's child support obligation based upon his net income. In her application she alleged that respondent had manipulated his tax withholding and had based his child-support adjustments on an artifically reduced take-home pay. The trial court denied her application and she now appeals, reiterating her argument about the respondent's alleged manipulation of the amounts withheld from his paychecks. We reverse.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we give weight to the trial court's findings, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

I.

The parties' marriage was dissolved in 1973. Two of the parties' four children were still minors. The 1973 decree placed these children in Nancy's custody and directed Leo to pay child support of $75 per week for the two minor children, dropping to $40 per week when only one child remained eligible for support. The 1973 decree also provided for year-end adjustments of the child support obligation. These adjustments were to be computed from a formula based on Leo's net income as shown by his income tax returns. The decree directed Leo to make his federal and state income tax returns available to Nancy for the purpose of computing the adjustment in child support.

In 1981 Nancy filed the present application requesting the court to determine that additional child support was due under the adjustment provisions of the 1973 decree. Specifically, Nancy alleged that Leo had artificially increased the amount of tax withheld from his paychecks by failing to claim several exemptions to

which he was entitled. Therefore, Nancy alleged Leo had based his adjustment to the child support obligation on artificially reduced take-home pay. Leo asserted that he had declined to take certain exemptions in order to bring the amounts withheld into conformity with his ultimate year-end tax obligation. Leo also asserted that the computation of his withholding had no effect on the child-support adjustment because the adjustment was based on net income for the entire year, after his ultimate tax liability had been determined, rather on his take-home pay in any given paycheck.

The trial court concluded that the record made by Nancy did not include enough evidence concerning Leo's income or the computation of his withholding to permit a determination that any amount of support was due under the adjustment provision in the 1973 decree. The trial court denied Nancy's application on the ground she had not met her burden to prove that additional support was due. Nancy then instituted this appeal.

II.

The stipulation which was incorporated in the final decree provided that the child support adjustments were to be based on the net income "by taking his gross pay, less Federal and State Income Tax and F.I.C.A. deductions made by his employer . . . ." We must construe the decree as we would any other instrument and give effect to that which is clearly implied as well as that which is expressly set forth; "the determining factor is the intention of the Court as gathered from all parts of the judgment." See Local Board of Health v. Wood, 243 N.W.2d 862, 865 (Iowa 1976).

The decree does not set forth how many exemptions, if any, Leo was to claim. At the time of the dissolution it appears that Leo declared four exemptions with his employer, himself and three other dependents. After the divorce, he decreased the number of dependents claimed. He now lists zero

dependents on his W-2 Form, Wage and Tax Statement. The trial court found that this was not done to circumvent the child support adjustment provisions of the divorce decree, but was to insure that he would have enough money withheld to meet his tax obligations so he would not have to pay additional taxes at the end of the year. We disagree with the court's finding in this regard.

It is clear from the decree that the adjustments to the child support payments are to be determined from respondent's income tax returns filed with the Federal and State governments. Respondent's income will be apparent from these returns based on the net income as defined in the decree and the amount of the refund he would receive. The decree assumes that the adjustments will be made in good faith according to the changes in respondent's income. We believe this was clearly the intent of the parties and the court when the decree was entered.

The record indicates that Leo did consult a Friend of the Court to determine the amount of support due by application of the formula set forth in the decree. However, it appears that Leo did not provide the Friend of the Court with copies of his income tax returns, but only allowed her to consider his W-2 forms. It was on that basis only that the Friend of the Court computed the adjustment in child support. Thus, the adjustments were made without taking into account the amount refunded to respondent each year. It also appears that Leo refused to produce copies of his federal and state tax returns for Nancy's inspection, as is required under the decree.

Having examined the amounts which were withheld from Leo's paycheck and the amounts which were refunded to him, we believe Leo manipulated his withholdings to artificially reduce his take-home pay and thus, decrease the amount he would have to pay in child support. According to testimony of, and exhibits prepared by Vince Hatt, a tax consultant, Leo's withholdings and refunds

for the years in question, 1974-1980, were as follows:

LEO'S WITHHOLDING TAX

Year	Federal	Tax Pd.	Refund	State	Tax Pd.	Refund
1974	2915.00	2185.72	729.28	701	452	249
1975	3538.00	2595.19	942.81	856	680	176
1976	4811.50	3130.61	1680.89	1001	691	310
1977	5112.00	2861.00	2251.00	952	700	252
1978	6182.00	3661.00	2521.00	1343	909	434
1979	6806.50	3135.00	3677.50	1520	816	704
1980	5932.00	2379.00	3553.00	1340	861	479
			15355.48			2604

The total amount refunded to Leo for these years is $17,959.48. This amount was not taken into account in computing the adjustments to child support. These figures, in addition to the fact that Leo failed to comply with the court order requiring him to turn over his tax returns, evince a plan on his part to insulate a portion of his income from consideration in making the adjustments. The decree provides that the support of $75.00 total for two children, or $40.00 if only one child remains eligible, is based on Leo's 1973 gross income of $330.00 per week and a net income of $240.00 per week and that:

> should the net pay as hereinabove determined be less than Two Hundred Forty Dollars ($240.00) per week that the child support payments shall automatically decrease without further order of the Court, by thirty percent (30%) of the decrease in said net income; it is further stipulated and agreed that should the net income of the Respondent as hereinabove determined increase or be greater than Two Hundred Forty Dollars ($240.00) per week that said child support shall automatically be increased, without further order of the Court, by an amount equal to thirty percent (30%) of the increase in the net income as hereinabove determined. . . . [A]ny adjustments necessary for the child support to increase or decrease from the base amount of Seventy-five Dollars ($75.00) per week for the two (2) children, or Forty Dollars ($40.00) per week for the one (1) child, shall be made and shall be promptly paid to the Petitioner should any child support be due, or shall be promptly refunded to the Respondent by

> the Petitioner should the Respondent have paid an excessive amount of child support, said payments to be made through the Clerk of District Court in the same manner as the child support payments hereinabove set forth.

As we have indicated, we believe Nancy is entitled to the additional child support based on the sums wrongfully withheld. The tax consultant, in exhibit 9A, determined the total refunds to be $17,959.48. The record indicates that Leo's income has consistently been above the $240.00 per week or $12,480 per year net income upon which the child support award was based in the original decree. Nancy requested an amount equal to 30% of the amount refunded to Leo, or $5,387.84. We recognize that this figure may not represent the total amount which would be due under the language of the decree since the adjustments are to be made according to the fluctuations in his income and not on the amount of tax he pays on his income. However, Nancy did not pursue or prove that a greater amount was due. Leo has made no effort to rebut this figure to show that he was entitled to a refund of amounts appropriately withheld. We thus reverse and remand to the lower court to enter judgment for Nancy in the amount of $5,387.84.

REVERSED AND REMANDED.