

IN THE COURT OF APPEALS OF IOWA

No. 0-290 / 89-1687

IN RE THE MARRIAGE OF ALVA EUGENE VAN ALST AND
CHERYL ANN VAN ALST

Upon the Petition of

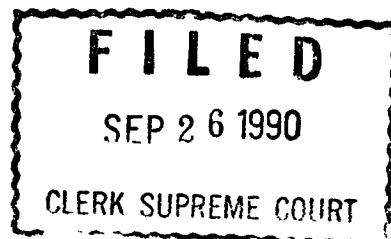
ALVA EUGENE VAN ALST,

Petitioner-Appellant,

And Concerning

CHERYL ANN VAN ALST,

Respondent-Appellee.



Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

Alva Van Alst appeals a district court dissolution
decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Michael L. Mollman of Mollman, Gruhn & Wertz,
Cedar Rapids, for appellant.

Robert M. Fassler, Cedar Rapids, for appellee.

Considered en banc.

PER CURIAM

Petitioner-appellant Alva Eugene Van Alst challenges the custody and financial provisions of his dissolution decree. We affirm.

Alva and respondent-appellee Cheryl Ann Van Alst were married in 1977. They have one child, Laura, born in 1978. Both parties are employed outside the home. They have minimal assets. The trial court awarded the parties joint custody of Laura and physical care to Cheryl. Alva was ordered to pay child support of \$65 per week. The personal property was divided between the parties. The parties' homestead was in foreclosure and there was no equity in the homestead.

I.

Alva contends he should have been awarded physical care of Laura. A review of the record convinces us both parents are caring and conscientious. Either parent would be a very suitable custodial parent. The issue is most difficult. We review the record and applicable case law. See In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). We find no reason to disagree with the decision of the trial court.

II.

Alva next contends the property division is not equitable. We have examined the division of personal property and find it equitable. See In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987).

III.

Alva lastly contends the child support award of \$65 weekly is excessive. We remand for application of the child support guidelines. We do not retain jurisdiction. Child support shall continue at \$65 weekly until rehearing.

Each party shall pay his or her own attorney fees, and one-half of costs on appeal.

AFFIRMED AS MODIFIED AND REMANDED.

All judges concur except Hayden, J., who specially concurs; Habhab, J., who concurs in part and dissents in part.

HAYDEN, J. (specially concurring)

I concur in the result.

HABHAB, J. (concurring in part and dissenting in part)

I concur with the majority except that part that remands this cause for hearing pursuant to the Uniform Child Support Guidelines. As to that part, I dissent.

This cause was tried to the court on July 19 and 20, 1989. The temporary child support guidelines were not adopted as permanent child support guidelines by the supreme court until September 29, 1989. Under the circumstances here, I do not believe the guidelines should apply.

The court order that adopted the guidelines provided that when the amount prescribed was used by the trial court as the basis of an award, a rebuttable presumption of correctness was established. Since it is a rebuttable presumption, I believe the litigants before the trial court should be afforded the opportunity to make their record as to why the amount as prescribed should serve as the amount to be awarded as child support or whether that amount, because of the special circumstances of the case, should be adjusted either upward or downward. I also believe that when an amount is granted that is inconsistent with the guidelines, the trial court, if it does not employ the guidelines, should be afforded the opportunity to explain by written findings why the guidelines are unjust or inappropriate. For these reasons we, as an appellate

court, should not for the first time impose those guidelines.

However, under the circumstances here, I see no reason to remand. The trial court fixed child support under the law as it existed at trial time. The support issue was litigated in accordance with the then statutory and case law. Merely because the guidelines were adopted after trial and during the course of the appeal is not sufficient reason to remand for rehearing on the issue of child support. I, of course, would require adherence to the supreme court's order of September 28, 1989, on all cases tried on and after the date of its adoption.

To the extent that In re Marriage of Jennings, 455 N.W.2d 284 (Iowa App. 1990), conflicts with this dissent, I would overrule it.