

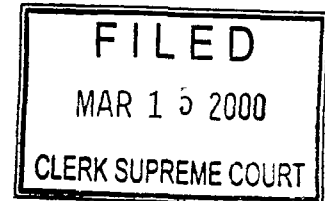
IN THE COURT OF APPEALS OF IOWA

No. 1999-317 (9-570) / 98-1128
Filed March 15, 2000

APRIL GALE ALLGOOD,
Petitioner-Appellee,

vs.

PHILLIP REMMARK, JR.,
Respondent-Appellant.



Appeal from the Iowa District Court for Mahaska County, Robert Bates,
Judge.

Phillip Remmark, Jr., appeals a district court order in a paternity action
setting the amount of current and past due child support. **AFFIRMED AS
MODIFIED.**

Gayla R. Harrison, Ottumwa, for appellant.

Eric C. Palmer of Palmer & Palmer, Oskaloosa, for appellee.

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

PER CURIAM

Respondent-appellant Phillip Remmark, Jr., appeals the district court decision in a paternity action setting the amount of current and past due child support. Appellant claims: (1) the court should have determined his child support obligation using his actual earnings instead of his earning capacity; (2) the court did not consider his responsibility to support another child; and (3) the award of retroactive child support resulted in a substantial injustice to him. We modify to reduce Phillip's child support obligation.

Petitioner-appellee April Allgood and Phillip are the parents of Sara, born in May 1982. Phillip voluntarily paid some support. Phillip had canceled checks showing \$1504 was paid between March 1994 and February 1997. The parties agreed he also gave Sara cash. In addition, he established a savings account of \$447 in Sara's name.

In May 1997, April filed a petition under Iowa Code chapter 252A to establish paternity and child support. At the time the petition was filed, Phillip was employed by Elliott Oil Company, where he earned \$37,419 in 1996. In June 1997, Phillip quit this job and worked full-time at a grocery store he owned in Eddyville. In 1997, Phillip earned \$16,480. His wife worked with him in the store. April earned \$10,092 in 1997.

In a May 1998 hearing on child support, Phillip testified he expected to earn only \$7800 in 1998. He testified he was divorcing his wife and he expected to be required to pay child support for his son, Parker. April testified she was working part-time as a waitress and expected to earn about \$8000 in 1998.

The district court based the child support obligation on the parties' 1997 income tax returns. Phillip was ordered to pay \$260 per month child support. The court determined Phillip's support for June 1, 1989, to May 31, 1998, at \$150 per month and entered judgment in the amount of \$16,200 for accrued support.

Our scope of review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew those issues properly raised and preserved for appellate review in the district court. *State ex rel. Houk v. Grewing*, 586 N.W.2d 224, 226 (Iowa App. 1998).

Phillip contends the district court considered his earning capacity, by using his 1997 income. He argues the court should have considered his earning capacity as evidenced by his 1998 earnings. He asserts his net monthly income from the grocery store was \$575 and April's net monthly income was \$625. He claims he should pay only \$120.22 a month for Sara's support.

The court must first determine Phillip and April's net monthly income as defined in the child support guidelines. In doing so, the court looks at each party's actual earnings and any other relevant circumstances. See *In re Marriage of Hart*, 547 N.W.2d 612, 614 (Iowa App. 1996).

Phillip's 1997 income tax return was in evidence. Phillip did not introduce evidence to support his projected 1998 income nor did he show the impact his pending dissolution would have on his earnings. We agree with the district court that on this record Phillip's 1997 income tax return is the only evidence of his income. The district court correctly considered it in fixing child support.

Phillip also claims the district court should have taken his support obligation to Parker into consideration. Phillip testified he expected to pay \$123 per month in child support for Parker. There is no order directing he pay this amount.

The guidelines permit a qualified additional dependent deduction, for a child for whom parental responsibility has been established under the guidelines. *State ex rel. Spencer v. White*, 584 N.W.2d 572, 574 (Iowa App. 1998); *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 464 (Iowa App. 1995). Parker is a qualified additional dependent because he was born during Phillip's marriage. The deduction for one child is \$90 per month. Phillip's net monthly income was determined to be \$1106. We reduce this by \$90, to \$1016 and apply the child support guidelines to reduce Phillip's obligation to \$238 per month.

Phillip claims the award of retroactive child support was inequitable and not warranted because April delayed in filing a petition seeking support.

Under chapter 252A, a father may be required to reimburse a mother for her past support of a child from the date of the child's birth. See *Foreman v. Wilcox*, 305 N.W.2d 703, 704 (Iowa 1981).¹ See also *Gremillion ex rel. Gremillion v. Erenberg*, 402 N.W.2d 410, 413 (Iowa 1987) (a chapter 252A judgment may be retroactive).

Phillip points out that in *Bryant v. Schuster*, 447 N.W.2d 566, 568 (Iowa App. 1989), previous payments were offset as a credit against an award of

¹ *Foreman v. Wilcox*, 305 N.W.2d 703, 704 (Iowa 1981), interpreted sections 252A.4(2) and 252A.5(5). After the petition in this case was filed in May 1997, chapter 252A was amended in July 1997. The language formerly found in section 252A.4(2) is now found in section 252A.3(9), and the language formerly found in section 252A.5(5) is now found in section 252A.5(2).

retroactive child support. In *Bryant*, however, the full amount of child support was made retroactive to the date of the child's birth. *Bryant*, 447 N.W.2d at 568. Here, Phillip was ordered to pay \$150 per month for retroactive support commencing June 1, 1989. Sara was born in 1982. The failure to offset voluntary payments is equitable where the support ordered did not start with Sara's birth.

We affirm the decision of the district court, but modify Phillip's child support obligation to \$238 per month. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.