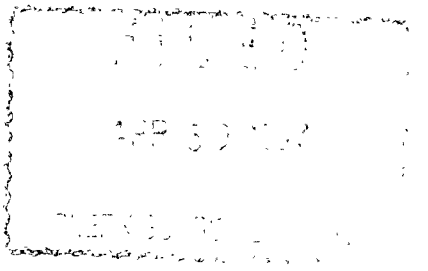
IN THE COURT OF APPEALS OF IOWA

No. 6-769 / 95-2001



IN RE THE MARRIAGE OF STEVEN L. UDELHOFEN AND JANET M. UDELHOFEN

Upon the Petition of
STEVEN L. UDELHOFEN,

Petitioner-Appellee,

And Concerning
JANET M. UDELHOFEN,

Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Peter A. Keller, Judge.

Respondent appeals the child support provisions of the district court's modification decree. **AFFIRMED.**

August B. Landis of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Ted E. Marks of Marks, Marks & Marks, Des Moines, for appellee.

Considered by Habhab, C.J., and Huitink and Vogel, JJ. Streit, J., takes no part.

HUITINK, J.

This is an appeal by a wife claiming the district court incorrectly calculated the husband's net monthly income for purposes of determining his child support obligation. We affirm on appeal.

Steven and Janet Udelhofen were previously married to each other. They have one child, Steve, who was born on September 16, 1979. A dissolution decree was entered for the parties on May 30, 1986. The decree granted the parties joint legal custody of Steve, with Janet having primary physical care. Steven was ordered to pay child support of $1000 per month. He was awarded the ability to claim Steve as a dependent on his state and federal income tax returns until his child support obligation terminated.

In May 1987, Steven filed a petition to modify the custody provision of the dissolution decree. The district court refused to modify custody. Steven appealed. In September 1988, while the appeal was pending, the district court denied Steven's request to decrease his child support obligation. On appeal, the supreme court modified the decree to grant Steven primary physical care of Steve. *In re Marriage of Udelhofen,* 444 N.W.2d 473, 476 (Iowa 1989). Steven's child support obligation was terminated with the filing of the opinion on August 16, 1989.

On March 14, 1990, Janet was ordered to pay child support of $434 per month. At that time the district court found Steven had net monthly income of $3500 from

his legal practice. The court found Janet had the ability to earn $17,500 from nursing and she received alimony. The court determined Janet's net monthly income from these two sources was $2583. On appeal, we modified to increase Janet's child support obligation to $581 per month. *In re Marriage of Udelhofen,* No. 90-0582 (Iowa App. July 26, 1991).

In January 1994, the decree was again modified to set forth a more specific visitation schedule. Janet appealed the assessment of certain costs. *In re Marriage of Udelhofen,* 538 N.W.2d 308, 310 (Iowa App. 1995).

In July 1994, Steven filed an application to modify the decree. On June 6, 1995, the district court entered an order incorporating the parties' agreement to transfer physical care of Steve to Janet. The matter of child support was set for a separate hearing. On June 14, 1995, the court ordered Steven to pay $412 per month in child support. The court found Steven had net monthly income of $1834 and Janet had net monthly income of $1701. The court denied Janet's motion for new trial. She appealed.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

II. Janet claims the district court incorrectly determined the amount of Steven's child support obligation. She believes that instead of considering Steven's income for 1995, the court should have taken his average income over the last two or three years. The evidence showed Steven's income had been higher in 1993 and 1994 than it was in 1995.

A court must determine the parents' current monthly income from the most reliable evidence presented. *In re Marriage of Powell,* 474 N.W.2d 531, 534 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parents' income. *Id.* Where the parents' income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income. *Id.*

Steven testified he did not expect to be able to earn as much in the future as he had in the past. In 1994, he left the law firm where he had been working and became a sole practitioner. He stated he was not engaged in insurance defense work, as he had been previously. In addition, Steven had made some bad investments and faced a large tax lien. Thus, much of his present income was used for debt retirement. We agree with the district court's conclusion that Steven's net monthly income was $1834. We find the court properly calculated his child support obligation under the child support guidelines.

III. Janet contends the district court should have awarded her the ability to declare Steve as a dependent on her income tax returns. The original dissolution decree gave Steven the ability to declare Steve as his dependent for tax purposes. Janet argues she is now providing the majority of the costs of raising Steve, and the dependency exemption should be transferred to her. After examining the facts in this case, we find it is equitable to allow Steven to retain the ability to declare Steve as his dependent.

We affirm the decision of the district court. Costs of this appeal are assessed to Janet.

AFFIRMED.