

IN THE COURT OF APPEALS OF IOWA

No. 7-038 / 96-0624

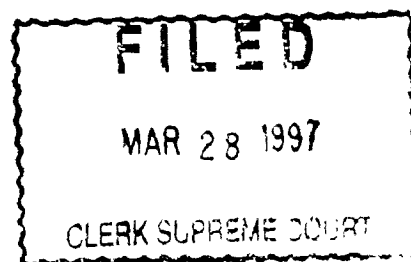
**IN RE THE MARRIAGE OF TERRY A. SCHNACK
AND NANCY J. SCHNACK**

**Upon the Petition of
TERRY A. SCHNACK,**

Appellant/Cross-Appellee,

**And Concerning
NANCY J. SCHNACK,**

Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Muscatine County, Bobbi M. Alpers,
Judge.

On appeal from the entry of an order modifying a dissolution decree, Terry argues the district court incorrectly determined the net monthly income of the parties, the amount of their respective child support obligations, and the amount of his future child support obligation when only one child remains eligible for support.

AFFIRMED AS MODIFIED.

Linda A. Whittaker and Joan U. Axel of Stanley, Lande & Hunter, Muscatine,
for appellant.

Jack Dusthimer, Davenport, for appellee.

Heard by Cady, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

Background facts. A decree dissolving the marriage of Terry and Nancy Schnack was filed November 7, 1989. Nancy was awarded the physical care of their two daughters, Jennifer, born August 8, 1981, and Laura, born March 7, 1984. Terry filed an application for modification of custody on June 16, 1995, requesting the children be placed in his physical care. Following two mediation sessions, the parties agreed that Nancy would have physical care of Laura, and Terry would have physical care of Jennifer.

A hearing on the application for modification was held February 26, 1996. Among other things, the parties disputed what Terry's income was and what their respective child support obligations should be.

Terry has appealed and Nancy has cross-appealed.

Scope of Review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the district court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Terry's income. This court finds neither party correctly set forth in their briefs Terry's net income based on the tax returns produced in the record. The

difficulty stems in part from the inherent nature of a small business. Gross income varies from year to year, and expense can be deferred or accelerated to increase or decrease net profit in any given year. Upon recalculation, we agree with the trial court's finding that the incomes of Terry and Nancy are substantially equal.

The trial court began its calculation, using Terry's 1994 1040 schedule C, showing a net profit of \$23,321 from Terry's business, "The Wrench Works." The trial court then added back \$17,500, the section 179 expense deduction. A rent deduction in the amount of \$16,317¹ was also added back as that schedule C deduction became income to Terry on schedule E. This total income of \$57,138 was then apportioned equally between Terry and his current wife, as according to the trial court's findings, the two ran both The Wrench Works and the rental property as equal partners.

Nancy's net monthly income was then calculated and determined to be approximately \$350 higher than Terry's. Applying the child support guidelines, the court found Nancy would owe Terry \$77 per month in child support. Next, the court looked at the special circumstances of the case, with both parents having primary physical care of one daughter. Terry had other income in his household (his current wife and business partner) while Nancy was the sole financial provider in her household. To avoid a substantial injustice between the parties, the court deviated

¹ \$25,000 rent deduction, minus all business expenses associated with the property, except depreciation.

from the guidelines, ordering no support from either party. This was a well-reasoned ruling. What is of primary concern is for each parent to shoulder his or her fair share of the cost of raising the two children. We affirm the trial court.

We do, however, strike that portion of the decree ordering Terry to pay Nancy \$338.85 per month child support when only the youngest child, who is in Nancy's care, requires support. The trial court should retain jurisdiction to determine the necessity and amount of support when that occurs.

II. Other Issues. Terry's argument that Nancy's net income was improperly calculated, was not preserved for appeal in a Rule 179(b) motion. *See In re Marriage of Halvorsen*, 521 N.W.2d 725, 729 (Iowa 1994). Nevertheless, we find that even if the trial court incorrectly adopted Nancy's calculations of Nancy's net monthly income, the difference of \$224.00 in net monthly income² under the Child Support Guidelines is inconsequential. If we used \$2,074 as Terry urges is Nancy's net monthly income, instead of the court's calculation of \$1,850, Nancy would owe \$22.00 more than the current support, and Terry would owe Nancy \$8.00 less. The insubstantial difference in figures, coupled with the fact Terry's income fluctuates each year due to the inherent nature of a small business, would not warrant modification.

² The \$224 is the difference between the court's figure of Nancy's net monthly income of \$1,850 and Terry's calculation of \$2,074 as Nancy's net monthly income.

This court does not have jurisdiction to address the issues raised by Nancy as her cross-appeal was not timely filed. *See Carpenter v. Ruperto*, 315 N.W.2d 782, 786 (Iowa 1982).

III. Attorney fees and costs. Each party shall pay their own attorney fees on appeal and the costs are to be paid one-half by each party.

AFFIRMED AS MODIFIED.