FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-602 / 93-120

IN RE THE MARRIAGE OF SUSAN K. WRIGHT AND RONALD H. WRIGHT

Upon the Petition of
SUSAN K. WRIGHT,

Appellant,

And Concerning
RONALD H. WRIGHT,

Appellee.

Appeal from the Iowa District Court for Story County, Joel E. Swanson, Judge.

Susan Wright appeals the child support provisions of the parties' modified decree and the district court's ruling that she was in contempt of court. **AFFIRMED AS MODIFIED.**

Mark J. Olberding of Miller & Olberding, Nevada, for appellants.

Michael F. Mahoney of Jordan, Mahoney & Jordan, P.C., Boone, for appellees.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

HUITINK, J.

Susan Wright appeals the child support provisions of the parties' modified decree and the district court's ruling finding her in contempt of court. We affirm as modified.

Susan and Ronald Wright were divorced in 1987. Susan was awarded custody of Adrienne, born September 1975. Ronald was awarded custody of Aaron, born July 1973, and Jared, born September 1977. Neither party was required to pay child support.

In 1991 the decree was modified, transferring custody of Adrienne to Ronald. The court ordered Susan to pay $500 per month child support and one-half of all medical, dental, and eye care expenses for the three children which were not covered under their insurance.

In April 1992 Ronald filed a petition requesting the court to find Susan in contempt for failure to make child support and health care payments. On June 17, 1992, Susan filed a petition for modification requesting custody of Adrienne. A combined hearing was held on both petitions.

The district court granted Susan's modification petition and ordered her to pay $480 per month for Aaron and Jared. Ronald was ordered to pay $427.50 per month for Adrienne (a net of $52.50 per month by Susan). Support was to be paid until the children reached their majority or as long as they were eligible for support while full-time students. The court also found Susan in contempt.

Our review in equity actions is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when determining the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). The amount of each parent's child support obligation should be determined in light of each parent's ability to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). Each parent's ability to contribute must be determined using the child support guidelines. See In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

Susan contends the district court miscalculated her net monthly income for child support purposes. We agree. We have reviewed all of the evidence on this issue and find Susan's net monthly income to be $1425.14. Under our child support guidelines, Susan owes Ronald $427.54 per month ($1425.14 x 30%), and Ronald owes Susan $427.50 per month ($1900 x 22.5%). Based on this de minimus difference we order no child support shall be paid by either party. The trial court is reversed on this issue.

Susan also contends the district court erred in determining Aaron was eligible to be claimed as a dependent by Ronald for child support purposes. We disagree.

Ronald testified Aaron was enrolled in high school at the time of the hearing and would enroll full-time at a community college in January 1993. This indicates Aaron was eligible for support. See Iowa Code § 598.1(2) (1991).

Other than Ronald's testimony, the only other evidence in the record is the following exchange between Susan, her attorney, and the court:

> THE COURT: You have had a chance to discuss this with your attorney. He indicates to me that you, as far as any admission or consent to the custody of your two sons, you will agree as to the younger one but have no position as to the older boy?
>
> MR. OLBERDING: (To Susan) What I am saying on Jared, you are contesting (sic) that he is Ron's dependent, you agree to that, correct?
>
> MS. WRIGHT: Yes.
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> MR. OLBERDING: And as for Aaron, you don't agree or disagree, you have no disposition?
>
> MS. WRIGHT: Yes.
>
> MR. OLBERDING: You are not sure if he is, but you are not going to contest it?
>
> MS. WRIGHT: Yes.
>
> THE COURT: And I assume from that, you have no further evidence concerning the custody question?
>
> MR. OLBERDING: No further evidence, Your Honor.

The court specifically asked if Susan had any evidence to support her contention and she declined to produce any. Since this was a factual dispute which depended upon the credibility of the witnesses, we defer to the judgment of the trial court. See In re Marriage of Vrban, 359 N.W.2d 420, 423-24 (Iowa 1984). We therefore affirm the trial court's determination that Aaron was a dependent for purposes of child support.

Finally, Susan contends the court erred when it found her to be in contempt for failing to comply with the terms contained in the February 1991 modification order.

Certiorari is a procedure to test the legality of an action by a lower board, tribunal, or court. Lane v.

Oxberger, 224 N.W.2d 245, 247 (Iowa 1974). We treat Susan's appeal as if originally cast as a certiorari proceeding. See Iowa R. App. P. 304. It is an action at law and is not triable here de novo. City of Des Moines v. Iowa Dist. Court, 428 N.W.2d 292, 296 (Iowa 1988). We will uphold the fact findings of the trial court if they are supported by substantial evidence. Downs v. Board of Trustees of Police Retirement Sys., 312 N.W.2d 563, 566 (Iowa 1981).

Substantial evidence exists to support the trial court's finding that Susan was in contempt. The court ordered her to pay child support in the amount of $500 per month, retroactive to December 1990. The court found she made one $500 payment, and the court did not reduce this obligation at any time. Therefore, we determine a writ of certiorari shall not issue from this court quashing the contempt order.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. Each party shall pay his or her own costs.

AFFIRMED AS MODIFIED.