

IN THE COURT OF APPEALS OF IOWA

No. 6-722 / 96-0172

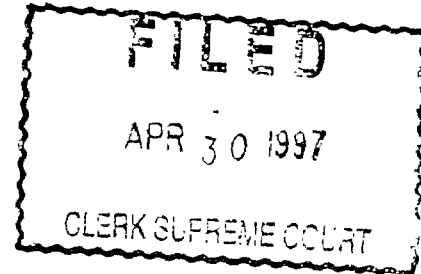
**IN RE THE MARRIAGE OF JANE
M. NELSON AND SCOTT J. NELSON**

Upon the Petition of
JANE M. HERBERT f/k/a JANE M. NELSON,

Petitioner-Appellee,

And Concerning
SCOTT J. NELSON,

Respondent-Appellant.



Appeal from the Iowa District Court for Audubon County, James M. Richardson, Judge.

Respondent appeals a district court ruling modifying and increasing his child support payments from \$425 per month to \$695 per month. **AFFIRMED.**

David L. Hammer and Angela C. Simon of Hammer, Simon & Jensen, Dubuque, for appellant.

J.C. Salvo of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Habhab, C.J., and Sackett and Cady, JJ.

SACKETT, J.

Respondent-appellant Scott J. Nelson appeals from a district court ruling modifying and increasing his child support obligation for two children from \$425 per month to \$695 per month. Scott contends the district court did not correctly calculate his income and that of his former wife, petitioner-appellee Jane M. Herbert. He further contends the district court was incorrect in finding a ten percent variance in what he paid and what the child support guidelines provided. He contends the children's expenses, contrary to the district court's findings, have not increased. He also contends the trial court did not give adequate consideration to the net worth of the parties. He complains Jane should not have been awarded attorney fees. Scott requests appellate attorney fees. We affirm.

Jane and Scott, married in 1984, are the parents of two children: Reann, born May 30, 1983; and Jessica, born July 12, 1985. Their marriage was dissolved in September 1989. At that time, Scott was a law student. The parties agreed his completion of law school would be a substantial change in circumstances justifying a review of child support. The original decree ordered Scott to pay \$137.50 per month per child in child support. In March 1993, Jane filed a modification action requesting an increase in Scott's child support payments. Jane had remarried. The district court increased Scott's child support payments for both children to a total of \$425 per month.

On August 30, 1995, Jane filed a second modification action seeking an increase in child support payments. At trial, Jane offered evidence Scott's income had increased from \$15,000 per year in 1991 to \$38,524 in 1994. Jane testified her second husband is a farmer, but that she works part-time at the Manning Hospital earning \$5.20 per hour as a cook. She has two children from her second marriage. Scott argued that excluding the bonus he received in 1994 his net annual income increased only \$408 from what he earned in 1993. He also argued Jane and her new husband's net worth had increased \$70,000 since 1992 while his had stayed the same. The district court found Scott's income had increased and accordingly increased his child support obligation to \$695 per month.

We review de novo. Iowa R. App. P. 4.

We first address the contention the district court was not correct in computing the parties' respective incomes. Scott advances Jane's annual earnings have increased from \$0 in 1993 to \$6510.66. He contends his net monthly income is \$1948.80. He maintains his expenses, not including groceries and gas but including child support payments, student loans, rent, and car payments, amount to \$1540 per month. He maintains Jane has voluntarily reduced her income by declining to work full-time. Scott also points out that in addition to the \$425 per month he pays in child support, he also pays \$181 per month in insurance premiums, raising his support payments to \$606 per month. He maintains the children's expenses have decreased, not increased.

Scott makes a series of other arguments which we have considered and rejected. The trial court did not abuse its discretion in computing incomes.

We recognize Scott has a substantial student loan payment for education, at least part of which was incurred prior to the parties' dissolution. There is a rebuttable presumption the child support determined by application of the guidelines is correct. Iowa Code section 598.21(4). We will not say under certain special circumstances that a student loan payment may be a reason to justify departure from the child support guidelines. Factors may be considered when the guidelines require judicial discretion or if the guideline amount would be unjustified. *See In re Marriage of Gehl*, 486 N.W.2d 284, 286 (Iowa 1992); *State ex rel. Cacek v. Cacek*, 484 N.W.2d 592 (Iowa 1992); *In re Marriage of Koepke*, 483 N.W.2d 612, 613 (Iowa App. 1992); *In re Marriage of Miller*, 475 N.W.2d 675 (Iowa App. 1991). Deviation from the uniform application of the child support guidelines is discouraged. *See State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 697 (Iowa 1993); *State ex rel. Schaaf v. Jones*, 515 N.W.2d 568, 570 (Iowa App. 1994). The trial court did not abuse its discretion in not deviating from the guidelines. Scott's argument the children's expenses have not increased is not relevant. *See Gehl*, 486 N.W.2d at 286. We affirm the award.

Scott also contends the court failed to address his request that a portion of child support be set aside in a conservatorship for the children. He sets forth no authority supporting his position in this regard. There is no basis to set up a conservatorship. We affirm the trial court on this issue.

Scott contends Jane failed to meet the necessary burden to show change. There is evidence Scott's income increased since the last modification.

Scott contends the trial court abused its discretion in ordering him to pay \$500 toward Jane's attorney fees. We review for an abuse of discretion. *See In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991); *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). The trial court did not abuse its discretion.

Jane requests an award of appellate attorney fees. Scott does not have the ability to pay the fees and we deny the request.

AFFIRMED.