

IN THE COURT OF APPEALS OF IOWA

No. 8-494 / 97-2258

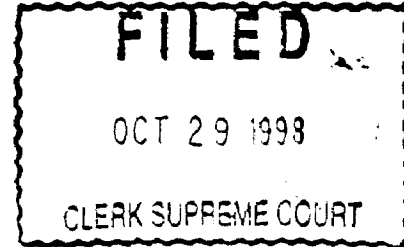
**IN RE THE MARRIAGE OF MICHELLE LYNN
LANGMAID AND KIRK WILLIS LANGMAID**

**Upon the Petition of
MICHELLE LYNN LANGMAID,**

Petitioner-Appellee,

**And Concerning
KIRK WILLIS LANGMAID,**

Respondent-Appellant.



Appeal from the Iowa District Court for Jasper County, Gary G. Kimes, Judge.

Respondent appeals from the modification order of the dissolution decree.

AFFIRMED AS MODIFIED.

Robert H. Laden of Laden & Pearson, P.C., Des Moines, and James R. McCreight of James R. McCreight, P.C., Urbandale, for appellant.

Lee M. Walker and Corey J. L. Walker of Walker, Knopf & Billingsley, Newton, for appellee.

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

SACKETT, C.J.

Respondent-appellant Kirk Langmaid challenges an order modifying his child support established under a dissolution decree. Kirk contends (1) he should not have been responsible for child support during a period when two of his three children lived with him; and (2) the district court should have averaged his farm income over several years to determine his net income for the purpose of applying the child support guidelines. We affirm as modified.

Kirk's marriage to petitioner-appellee Michelle Langmaid was dissolved on December 11, 1990. In the decree, Michelle was granted primary physical care of their three children: Meegan, born January 9, 1979; Ryan, born April 7, 1981; and Ross, born November 14, 1985. Kirk's child support originally fixed at \$1500 per month was reduced to \$750 in 1995.

In February of 1996, the parties agreed Ryan and Ross could live with Kirk. Kirk and Michelle agreed Kirk would not owe any child support for the time the boys lived with him. The boys later returned to live with their mother. The date of this event is disputed.

In May of 1997, Michelle asked that Kirk be found in contempt for failing to pay child support, and in June of 1997 she sought to modify the decree. Meegan was then an adult and the decree did not make provision for child support for two children.

The district court ruled jointly on the contempt and modification application. Kirk was not found in contempt, the trial court finding there had been an agreement he not pay child support while the boys lived with him. The trial court further found Kirk did not owe child support in February, March, and April of 1996.

Kirk contends his child support should also be suspended from May 1996 to January 1997. The trial court, after reviewing conflicting evidence, suspended the obligation for only the three months. While it was agreed the boys had moved in with their father, there is conflicting evidence as to the period it was their primary residence. We review de novo giving credence to the trial court's assessment of credibility. *In re Marriage of Hardy*, 539 N.W.2d 729, 730 (Iowa App. 1995). We affirm on this issue.

The trial court found no substantial change in Michelle's earnings since child support was fixed. The trial court used Kirk's 1996 income of \$54,924 to fix his child support obligation. Kirk contends this figure does not accurately reflect his annual income and the district court should have used a three-year average and fixed his child support obligation based on an annual income of \$37,278.

The most substantial portion of Kirk's income comes from agricultural pursuits. His income in 1994 was \$23,832 and in 1995 it was \$33,078. The trial court elected to use the 1996 income figure only and fixed his monthly child support at \$944 as of July 1, 1997.

Kirk's income fluctuates. Generally, we look at a person whose income comes primarily from farming and average it over a three-year period to come up with a figure on which to compute child support. *See In re Marriage of Cassel*, 487 N.W.2d 679, 683 (Iowa App. 1992). There is no valid reason not to make such a computation in this case. We therefore consider Kirk's annual income to be \$37,278 and modify to fix his child support at \$854.43 per month as of July 1, 1997.

Costs on this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.