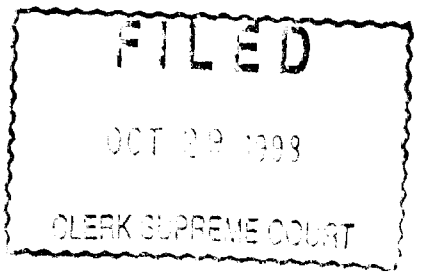
IN THE COURT OF APPEALS OF IOWA

No. 8-345 / 97-1264
Filed October 29, 1998



STATE OF IOWA, ex rel.,
GUY McCLURE, II,
Appellee,

vs.

GUY W. McCLURE,
Appellant.

Appeal from the Iowa District Court for Polk County, Paul R. Huscher, Judge.

On appeal from a judgment in an action to establish child support, the appellant argues the district court erred in awarding retroactive child support for a period of time during which the parties' child had received social security benefits. **AFFIRMED.**

Joseph A. Nugent, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and M. Elise Pippin, Assistant Attorney General, for appellee.

Heard by Cady, C.J., and Streit and Vogel, JJ., but decided by Streit, P.J., and Vogel and Mahan, JJ.

STREIT, P.J.

I. Background Facts and Proceedings.

Guy W. McClure and Dorothea McDonald were married in 1984 and divorced in 1987. They have one child, Guy W. McClure, II, born November 22, 1985. After the divorce, Guy II was placed in Guy's custody. Dorthea was not ordered to pay child support. Guy has remarried and has two minor children with his new wife. Guy is employed by Holmes Oldsmobile, where he has a gross yearly income of $26,919.

In March 1995, Guy II was placed in Dorothea's custody by the juvenile court in Polk County. Dorothea has also remarried and lives with her husband and mother-in-law in Oklahoma in a home owned by her mother-in-law. Dorothea moved Guy to Oklahoma to live with Dorothea. From 1995 until June of 1997 Guy II received $331 in monthly social security (SSI) benefits due to his attention deficit hyperactivity disorder. Guy paid no child support to Dorthea from August 1996 to June 1997.

Dorothea has a high-school education. For the three years before trial she operated restaurant businesses using money loaned to her from her mother-in-law. Both restaurants have closed and Dorothea is consulting with an attorney about filing bankruptcy. Dorothea has a minimum-wage earning capacity.

The Iowa Child Support Recovery Unit commenced an administrative proceeding against Guy for support in July 1996. A trial was held in the Iowa District Court for Polk County in June 1997. After trial, the district court ordered Guy to pay

$313.79 in monthly child support. He was also ordered to pay arrears in the amount of $3137.20, payable in $150 monthly installments. Guy appeals.

II. Standard of Review.

Review of an equity action determining child support is de novo. *See* Iowa R. App. P. 4. We must examine the entire record and in so doing adjudicate anew the rights of the parties on the issues properly presented. *In re Marriage of Estlund*, 344 N.W.2d 276, 279 (Iowa App. 1983). We give weight to the findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. Amount of Child Support Obligation.

McClure argues the trial court erred in refusing to deviate from the child support guidelines in determining his child support obligation. He argues Dorothea does not need the guideline amount to support Guy II because most of his necessities are provided by Dorothea's mother-in-law. He argues, in contrast, paying the guideline amount would work a hardship on his new family. Guy also argues the court did not use the correct incomes of the parties when calculating his obligation.

The child support guidelines established by the supreme court are to be strictly applied unless the court makes a specific finding that the scheduled amount would be "unjust or inappropriate" under the criteria established by the guidelines. Iowa Code § 598.21(4)(a) (1991); *State ex rel. Reaves by Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994). Only by faithful adherence to the schedule will the "inadequate,

inconsistent, and ineffective" practices of the past be remedied. *In re Marriage of Fox*, 559 N.W.2d 26, 29 (Iowa 1997); *In re Marriage of Powell*, 474 N.W.2d 531, 533 (Iowa 1991).

We have reviewed Guy's arguments and find none of them establish application of the guideline amount is unjust or inappropriate. Guidelines are not designed to provide merely minimum support to a child. *See State ex rel. Nielsen v. Nilesen*, 521 N.W.2d 735, 737 (Iowa 1994) Guy's assertion the guideline amount is greater than Guy II's living expenses does not take into consideration the sacrifices Dorothea makes by living in a home owned by her mother-in-law and being completely financially dependent on her mother-in-law. Because Guy's contribution is in a monetary form does not make it greater than Dorothea's who provides for Guy II's needs in the best way she can. Guy II will only benefit from the receipt of his father's child support payment.

Guy asserts his obligation to support his new family and his actual living expenses make it burdensome to pay child support.[1] These circumstances alone do not justify a deviation from the guideline amount. *See In re Marriage of Ladely*, 469 N.W.2d 663, 665 (Iowa 1991); *State ex rel. Dept. of Human Services v. Burt*, 469 N.W.2d 669, 670 (Iowa 1991). Guy is capable of providing Guy II with the ordered amount of support. A parent has the duty to pay support in accordance with his or her

[1] Guy was allowed deductions for his qualified additional dependents in calculating his child support obligation.

ability to pay. *Iowa Dept. of Human Serv. ex rel. Gonzales v. Gable*, 474 N.W.2d 581, 583 (Iowa App. 1991).

Guy argues Dorothea should have been credited with a greater earning capacity than minimum wage. Dorothea has a high-school education. She has failed twice at attempts to start a restaurant business. She is going to file for bankruptcy. She has no assets and large debt. The trial court was realistic in assessing Dorothea's earning capacity at minimum wage. The trial court's assessment of Guy's income for purposes of calculating his child support obligation is affirmed.

For these reasons the trial court did not err in refusing to deviate from the child support guideline amount in determining Guy's obligation. The trial court's order that Guy pay $313.79 per month to contribute to the support of Guy II is affirmed.

IV. Arrearage.

Guy argues the trial court erred in ordering him to pay ten months worth of child support arrearage because during the months he was not paying, Guy II was receiving $331 per month in SSI benefits.

Guy contends under the rule set out in *Potts v. Potts*, 240 N.W.2d 680 (Iowa 1976), he should be allowed to offset his child support obligation during the time Guy II was receiving social security benefits. His reliance on *Potts* is misplaced. The *Potts* case dealt with a noncustodial parent that was disabled. The holding of *Potts* is social security disability payments made to a disabled parent's child offset the disabled parent's child support obligation. *Id.* at 682. Any disability payments in

excess of the disabled parent's child support obligation are credited against child support arrearage due to a lapse of time between occurrence of disability and commencement of benefit payments. *Id.*

When a disabled noncustodial parent's child receives social security disability payments, the primary purpose of the payments is to replace the disabled parent's income and meet the current needs of the child. *See id.* Guy is not disabled. Guy II did not receive social security benefits to replace income that Guy could not provide. He received the benefits to help absorb the cost of treating his disability, Attention Deficit Hyperactivity Disorder. Treatment of his disability results in extra medical costs and the cost of counseling. Dorothea must now absorb these costs in addition to Guy II's typical living expenses. She is not being unjustly enriched by receiving the arrearage Guy owes for the support of Guy II. Generally, the receipt of excess government benefits over the monthly child support obligation is equitably deemed a gratuity to the children. *See Newman v. Newman*, 451 N.W.2d 843, 844 (Iowa 1990).

For these reasons, we affirm the trial court's order Guy pay the $3137.20, arreage which accumulated from August 2, 1996, the date Guy requested a hearing to determine his support obligation, to June 1997, the date of trial.

AFFIRMED.