

IN THE COURT OF APPEALS OF IOWA

No. 3-266 / 92-1459

FILED

MAR 24 1994

CLERK SUPREME COURT

STATE OF TEXAS, ex rel., ALICE SWINNIE,

Appellant,

vs.

WILLIAM EARL BRADFORD, JR.,

Appellee.

Appeal from the Iowa District Court for Black Hawk
County, Peter Van Metre, Judge.

The State appeals a district court's decision setting
child support pursuant to Iowa Code chapter 252A. **REVERSED
AND REMANDED.**

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; Kay Delafield,
Assistant Attorney General; and James A. Lally, Assistant
County Attorney, for appellant.

William Earl Bradford, Jr., Waterloo, pro se.

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

DONIELSON, C.J.

Alice Swinnie and William Earl Bradford, Jr. previously had a relationship while they both lived in Waco, Texas. During this time Alice bore three children: Jimmy Lewis Fields, born on September 17, 1976; Jeffrey LaDale Fields, born on March 3, 1978; and Shaffer Allen Fields, born on June 9, 1979.

The parties subsequently had a falling out and Alice shot William and his new girlfriend, Ivory. Alice was placed on probation. She has since remarried and is living in Waco with her husband, two of her other children, and a step-daughter. She is employed. Her net monthly income is unknown. Alice also receives public assistance. It is unknown whether her husband is employed.

William moved to Waterloo, Iowa. He married Ivory and assumed the support for her three children. William and Ivory have had one child during their marriage. William is employed as a bus driver for Exceptional Persons, Inc. He earns \$7.27 per hour and works about thirty hours per week. Ivory is employed by Powers Manufacturing, but her income is unknown.

Because Alice was receiving public assistance in Texas, a suit to establish William as the father of Jimmy, Jeffrey, and Shaffer and to require him to pay child support was initiated in Texas. The case was forwarded to Iowa for prosecution. William represented himself pro se in the action. Blood tests were conducted of William and

the children. The tests revealed William was the father of Jimmy and Shaffer. William is not the father of Jeffrey. The parties agree William should not be responsible for child support for Jeffrey.

A hearing was held on August 3, 1992. At the time of the hearing William was supporting "the child born during his marriage and two step-children. The district court ordered William to pay child support of \$22 per month. \$13 of this amount was allocated to current support and \$7 was allocated to the arrearage claim of the State of Texas.

The State of Iowa filed motion pursuant to Iowa Rule of Civil Procedure 179(b). The State estimated William's net monthly income was \$750 and claimed that under the child support guidelines he should pay \$275 per month for two children. The district court granted the motion. The court amended its earlier order to provide that William should pay child support of \$65 per month, and his payment toward the arrearage was increased to \$22 per month. The court stated:

Under all the circumstances in this record I find this is the maximum payment that can equitably be extracted from Respondent's limited income to reimburse the State of Texas.

The State appeals. It claims the district court should have followed the child support guidelines. In the alternative, the State claims the district court should have made more particular findings as to why application of the guidelines would be inappropriate or unjust.

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There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). In order to apply the guidelines, the court must determine both parents' current monthly income from the most reliable evidence presented. In re Marriage of Lee, 486 N.W.2d 302, 305 (Iowa 1992).

A court should first determine the amount of child support specified by the guidelines. In re Marriage of Brown, 487 N.W.2d 331, 333 (Iowa 1992). Then, that amount may be adjusted if necessary to provide for the needs of the children and to do justice between the parties under the special circumstances of the case. Id. The court cannot vary the amount of child support without a written finding that the guidelines would be unjust or inappropriate. In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

In the present case, the district court did not determine the amount of child support specified by the guidelines. The only financial information presented was that William earned \$7.27 per hour and worked about thirty hours per week. No information was presented about deductions to arrive at his net monthly income. Also, in her petition Alice stated she was employed, but no evidence was presented regarding her income.

In our de novo review, we are unable to determine the amount of child support under the guidelines because there is insufficient evidence concerning the parties' net monthly incomes. Without the first step of determining the amount of child support under the guidelines, any findings concerning the appropriateness of applying the guidelines would be premature.

We reverse and remand to allow the parties to present additional evidence which will allow the district court to apply the child support guidelines. We make no findings as to what the amount of child support under the guidelines would be or whether application of the guidelines would be appropriate under the facts of this case. We do not retain jurisdiction. Costs of this appeal are assessed one-half to each party.

REVERSED AND REMANDED.