

IN THE COURT OF APPEALS OF IOWA

No. 0-655 / 90-519

FILED

JUL 26 1991

CLERK SUPREME COURT

IN RE THE MARRIAGE OF VERNON D. KLUTH AND MICHELLE R. KLUTH

Upon the Petition of
VERNON D. KLUTH,

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Appellant,

And Concerning
MICHELLE R. KLUTH,

Appellee.

Appeal from the Iowa District Court for Linn County,
Thomas M. Horan, Judge.

The husband appeals a dissolution decree, challenging
economic provisions. **AFFIRMED AS MODIFIED.**

Henry Nathanson, Cedar Rapids, for appellant.

Karen A. Volz of Ackley, Kopecky & Kingery,
Cedar Rapids, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

Vernon and Michelle Kluth were married in July 1974. They had two children during their marriage: Melissa Kluth, born April 7, 1977; and Beau Kluth, born November 21, 1980.

Vernon was born in 1956. He has been employed as a factory worker at Quaker Oats Company in Cedar Rapids, Iowa, for the past fifteen years. Vernon earns \$14.19 per hour in base pay, plus a \$.40 per hour premium for working the third shift. In 1989 he had the opportunity to work quite a few overtime hours, and his gross earnings were \$45,864.87. Vernon testified there was a decreased demand for oat bran, which would decrease the opportunity for overtime in the future.

Michelle was also born in 1956. She had various minimum-wage jobs during the marriage. At the time of the hearing she was working as a self-employed home care provider and earned a gross income of about \$600 per month. Michelle was planning to attend school full-time beginning July 1990 in a two-year radiology program. When she finishes the program she can expect to earn between \$8 and \$10 per hour.

The parties have agreed Michelle should have physical care of the two minor children. The district court ordered Vernon to pay \$650 per month in child support. Vernon was also ordered to pay \$550 per month in alimony for twenty-four months. The court divided the parties' marital

property between them. Vernon was ordered to pay \$822.50 toward Michelle's attorney fees. Vernon has appealed.

I. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Vernon contends his child support obligation is excessive. He also believes the court erred in not decreasing his obligation after the oldest child reaches the age of eighteen.

It is well established parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). There is a rebuttable presumption the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). One of the primary purposes of the uniform guidelines is to provide an efficient, equitable, and predictable method of determining child support. Gilley v. McCarthy, 469 N.W.2d 666, 667 (Iowa 1991).

A court must determine the parent's current monthly income from the most reliable evidence presented. In re

Marriage of Powell, No. 90-1455 (Iowa June 19, 1991). This often requires the court to carefully consider all of the circumstances relating to the parent's income. Id.

In this case we have included the \$.40 premium Vernon receives for working the third shift in our calculation of his monthly income because the evidence suggested he would continue to receive the premium. See In re Marriage of Lalone, 469 N.W.2d 695, 696 (Iowa 1991) (Bonus payment included in income where evidence showed income would remain at current level in the future).

On the other hand, we have not included any wages for overtime in Vernon's monthly income. We reiterate our discussion found in the case of In re Marriage of Heinemann, 309 N.W.2d 151, 152 (Iowa App. 1981):

With regard to overtime wages, we believe that the amount of petitioner's child support obligation should be determined with reference to the amount of income he can actually expect to earn; it should not depend on the inclusion of income that is entirely speculative in nature and over which he has little if any control. Although overtime work has been available to the petitioner in the past, there is no guarantee that it will be available to him in the future and it should thus not be included in his income.

Furthermore, a child support obligation should not be so burdensome that a party is required to work overtime to satisfy it. Id. at 153.

The December 1990 child support guidelines set forth several deductions used to calculate net monthly income from gross monthly income. A noncustodial parent's income may be reduced for prior obligations of child support. In

re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991). Vernon must pay \$45 per week, or \$195 per month, in child support under the terms of an order in a paternity action, and this amount should be deducted from his gross income.

We calculate Vernon's gross income per month is \$2,528.93. We find approximately \$557.51 per month is withheld in state and federal taxes, and \$193.47 is withheld for FICA. Vernon pays union dues of \$20 per month and health insurance of \$20 per month. We also deduct his prior child support obligation of \$195 per month. Thus, his net income is \$1,542.95 per month.

While she is attending school Michelle's income will be zero. Once she becomes employed she will be earning between \$8 to \$10 per hour. If we estimate she will receive \$9 per hour, her gross income will be about \$1,560 per month, and her net income would be about \$1,092.

Using the chart for two children, we find Vernon should pay \$574 per month in child support until July 1, 1992, at which time Michelle should be finished with school. After July 1, 1992, Vernon must pay child support of \$463 per month until the oldest child reaches the age of eighteen or graduates from high school, whichever occurs later. At such time Vernon's child support obligation will become \$347 per month until the youngest child reaches the age of eighteen or graduates from high school, whichever occurs later. The decree is modified accordingly.

III. Vernon seeks to declare one of the children as a dependent on his income tax returns.

The general rule is the custodial parent is allowed to claim the exemption for income tax purposes. In re Marriage of Kerber, 433 N.W.2d 53, 54 (Iowa App. 1988). However, a noncustodial parent may be awarded a dependency exemption. See In re Marriage of Walsh, 451 N.W.2d 492, 493 (Iowa 1990); In re Marriage of Snead, 448 N.W.2d 705, 708 (Iowa App. 1989).

We find Vernon should be awarded the dependency exemption for the youngest of the two children for income tax purposes. The decree is modified on this issue.

IV. Vernon contends he should not have to pay rehabilitative alimony for Michelle.

When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981).

We find the award of rehabilitative alimony was appropriate in this case and affirm the award of the district court.

V. Michelle asks for attorney fees for this appeal.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d

387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Considering the respective financial conditions of both parties, we order Vernon to pay Michelle the sum of \$500 toward her appellate attorney fees. The costs of this appeal are to be assessed one-half to each party.

AFFIRMED AS MODIFIED.