FILED
SEP 16 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-313 / 93-1767

STATE OF IOWA ex rel. IOWA DEPARTMENT OF HUMAN SERVICES, On Behalf of CRYSTAL LYNNE GARDNER and DEVIN MICHAEL GARDNER,
Minor Children,

Petitioner-Appellee,

vs.

RONALD LEE GARDNER,

Respondent-Appellant.

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

Gardner appeals from a judgment of the district court establishing paternity of two minor children and setting child support. **AFFIRMED AS MODIFIED.**

Ken Sojka of Buckley & Sojka, Harlan, for appellant.

Bonnie J. Campbell, Attorney General, Johm M. Parmeter, Special Assistant Attorney General, Mark A. Haverkamp, Assistant Attorney General, and Mary Jo Neff, Assistant County Attorney, for appellee.

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

HABHAB, J.

Charlene Wilke and Ronald Gardner were involved in a relationship for approximately eight years. They have two children born of this relationship, Crystal, born July 22, 1989, and Devin, born August 16, 1991. Ronald has physical custody of two minor children from a previous marriage.

Ronald and Charlene's relationship ended in June 1992. At that time, Charlene began receiving public assistance which lasted for one year. Charlene subsequently obtained a job earning $12,480 per year. Charlene also began receiving food stamp benefits in the amount of $250 per month. At this time, Charlene is living with Arnold Young. Charlene and Arnold are currently engaged. Arnold earns approximately $12,000 per year and pays one-half of all living expenses.

Ronald is a maintenance worker at a hospital earning a gross wage of $1287 per month or $15,444 per year. Ronald claims average monthly expenses of $1275. Following the end of the present relationship, Ronald developed severe financial problems. His home was struck by lightening, but insurance only covered fifty percent of the loss. Ronald ultimately lost his house. Ronald's 1980 Ford Pinto is in poor shape and has 140,000 miles on it. A car in working condition is essential for Ronald's job since he is frequently on call.

On November 13, 1992, the State filed a petition to establish paternity and set current and accrued child

support. Ronald admitted he was the father of Crystal but denied he was the father of Devin. Subsequent blood tests indicated that Ronald was Devin's father. The district court ordered Ronald to pay Charlene $268 per month in child support, based on the district court's findings that Charlene's net monthly income was $543 per month and Ronald's net monthly income was $800. Ronald has appealed.

Ronald asserts that if he is ordered to pay Charlene child support, she will buy a new car or take a vacation rather than spend the money on the children. Ronald maintains it is virtually impossible on his meager salary to support his two children from his previous marriage and his two children from his relationship with Charlene. Ronald contends Arnold Young's income should be a consideration in determining a more fair amount he should pay. Ronald also points out he is almost financially ruined due to the fire that destroyed his house. He notes it is impossible for him to get any credit, and he has had to sell much of his personal property in order to raise money.

Our review of issues in equity is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. State ex rel. Nicholson v. Toftee, 494 N.W.2d 694, 695 (Iowa 1993). We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(7).

The district court properly used the guideline chart for two children since Charlene has two children living in her household who can claim both Charlene and Ronald as parents. See Gilley v. McCarthy, 469 N.W.2d 666, 668 (Iowa 1991). The district court also properly did not consider Arnold Young's income in determining Charlene's net monthly income. See State ex rel. Reaves v. Kappmeyer, 514 N.W.2d 101, 104 (Iowa 1994) (live-in boyfriend's contribution to living expenses not considered in determining net monthly income of custodial parent). We find the district court properly determined the parties' net monthly incomes and properly used the guideline charts to arrive at the $268 per month payment.

Ronald argues that the amount arrived at by the district court should be modified due to his financial situation and due to responsibility to support his two children from the previous marriage. Regarding the deviation from the guidelines, the supreme court has stated:

> The purpose of the guidelines is to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes. While the guidelines cannot take into account the specific facts of individual cases, they will normally provide reasonable support. In ordering child support, the court should determine the amount of support specified by the guidelines. There shall be a rebuttable presumption that the amount of child support that would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such

> adjustment necessary to provide for the needs of the children and to do justice between the parties under the special circumstances of the case.

Nicholson, 494 N.W.2d at 695. We must determine if strict application of the guidelines would result in substantial injustice. See Reaves, 514 N.W.2d at 104.

Based on the affidavit of financial status provided at trial by Ronald, we find his living expenses to be $1275 per month. Ronald's net monthly income is $800. In addition, Ronald is attempting to provide for the two children currently in his custody. Ronald is having a difficult time meeting his expenses and providing for the children in his custody. In addition, we recognize Charlene is currently receiving financial help from her live-in fiance. We find a strict adherence to the guidelines would result in an injustice to Ronald and to the children in his custody. We also recognize Ronald does have some responsibility to support his children in Charlene's custody. As a result, we find a downward modification is necessary in this particular case to achieve fairness. See Reaves, 514 N.W.2d at 105 (downward adjustment necessary to achieve fairness to noncustodial parent and children he supports); Nicholson, 494 N.W.2d at 698 (downward adjustment necessary to achieve fairness to noncustodial parent and children he supports). We modify the monthly support to $200.

AFFIRMED AS MODIFIED.