IN THE COURT OF APPEALS OF IOWA

FILED
JAN 29 1997
CLERK SUPREME COURT

No. 6-383 / 95-1000

SANDRA FRY,

Plaintiff-Appellant,

000127

vs.

BOBBY BASHORE,

Defendant-Appellee.

Appeal from the Iowa District Court for Muscatine County, Edward B. deSilva, Judge.

Sandra Fry appeals from the district court's judgment establishing paternity of her child in Bobby Bashore and ordering child support. **AFFIRMED IN PART AND REVERSED IN PART.**

David W. Newell, Muscatine, for appellant.

No appearance by appellee.

Considered by Habhab, C.J., and Streit and Vogel, JJ.

STREIT, J.

Mother appeals from the district court's judgment establishing paternity of her child and ordering child support. She contends the support ordered by the court was not set in accordance with the child support guidelines and the court did not have jurisdiction to establish visitation, dependency exemption, change of child's surname and allocation of the parties' assets and debts.

Sandra Fry and Bobby Bashore are the parents of Gina, born February 15, 1990. Sandra and Bobby cohabitated from February or March 1989 until after Gina's birth but they never married.

In June 1994, Sandra filed a petition to establish current child support. Bobby's answer requested blood testing to establish paternity. The testing was never done, however, because Bobby did not pay the advance costs as ordered and the district court found the evidence did not warrant testing.

Following a hearing, the district court found Bobby to be Gina's father, ordered him to pay $50 per week in child support, provided a visitation schedule, allowed Bobby to claim Gina as a tax exemption, ordered Gina's surname changed from Fry to Bashore-Fry, and divided the parties' assets and debts as of the date of separation.

Sandra appeals. She contends the court failed to set the support in accordance with the child support guidelines and failed to order child support retroactive to the parties' separation or the filing of the petition. She also argues the district court did

not have jurisdiction to decide the other issues in the case, but in the alternative, if the district court had jurisdiction, she claims the court: (1) improperly allocated the dependency exemption; (2) should have placed limits on Bobby's visitation rights; (3) improperly changed the child's surname; and (4) the allocation of the parties' assets and debts should be vacated. Bobby has not made any cross-appeal.

The standard of review in a paternity action for ordering child support is de novo. Iowa R. App. P. 4.

Sandra argues the child support does not comply with the guidelines and the court stated no reason for a deviation. The district court ordered Bobby to pay the sum of $50 per week.

The child support guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result. *In re Marriage of Swan*, 526 N.W.2d 320, 325 (Iowa 1995); *State ex rel. Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994). Deviation from the child support guidelines is discouraged. *State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 697 (Iowa 1993); *State ex rel. Schaaf v. Jones*, 515 N.W.2d 568, 570 (Iowa App. 1994).

A court should first determine the child support obligation under the child support guidelines and then decide whether an adjustment is warranted. *Swan*, 526 N.W.2d at 325. In order to deviate from the guidelines, a court must make a written finding the application of the guidelines would be unjust or inappropriate under the

"special circumstances" of the case. *In re Marriage of Gehl*, 486 N.W.2d 284, 286-87 (Iowa 1992).

Before applying the guidelines, we must first determine the net monthly income of the custodial and noncustodial parent. We make this determination from the most reliable evidence presented. *Powell*, 474 N.W.2d at 533. We calculated Bobby's net monthly income for 1994 at $1094 based upon his trial testimony and financial affidavit. Sandra's net monthly income was $1119. The guidelines indicate Sandra is entitled to a monthly deduction for her three additional children of $186, reducing her net monthly income to $933. Thus, under the guidelines Bobby's support is 22.8% and child support should be ordered at $250 per month.

The guidelines give discretion to the district court in setting child support to adjust amounts as necessary to do justice under the special circumstances of each case. *Lalone*, 469 N.W.2d at 695; *Miller*, 475 N.W.2d at 679-80. The trial court did not express any special circumstances why it ordered only $50 per week, nor do we observe any special circumstances, therefore we reverse the trial court and order Robby to pay the sum of $250 per month to Sandra for child support commencing on the first day of the month following the filing of the Petition.

Sandra claims the court exceeded its jurisdiction in awarding the dependency exemption to Bobby, establishing visitation, changing Gina's last name and allocating the parties' assets and debts. Sandra filed a 252A petition. The Iowa Supreme Court has found chapter 252A does not make any reference to other issues such as

visitation, name change, or tax exemption. *See State Dept. Of Human Services v. Burge*, 503 N.W.2d 413, 416 (Iowa 1993) (citing *Beneventi v. Beneventi*, 185 N.W.2d 219 (Iowa 1971)). The court further stated "we do not believe the legislature, in adopting the Uniform Support Law, ever intended to include under chapter 252A the review or determination of the issues involved in a suit for divorce." *Burge*, 503 N.W.2d at 416 (quoting *Beneventi*, 185 N.W.2d at 223-24). Therefore, we conclude based on this same reasoning, the district court's order insofar as it provided for dependency exemption, name change, visitation and allocation of the debts and assets of the relationship was beyond the scope of its authority and the pleadings.[1] We reverse.

AFFIRMED IN PART AND REVERSED IN PART.

---

[1] We understand the trial judge was acting as a practical agent for justice. His attempt to help solve the issues and conflicts which surround this paternity action and exist among this relationship which has ended between the parties is admirable. Such effort is misplaced, however, within the purview of a 252A action.