

IN THE COURT OF APPEALS OF IOWA

No. 1-620 / 91-482

FILED

JUN 25 1992

CLERK SUPREME COURT

STATE OF IOWA, ex rel., PAUL ARONES, by his Father,
GUILLERMO ARONES,

Appellant,

1180

vs.

MICHELLE FERNANDES-MILLER, a/k/a MICHELLE ARONES,

Appellee.

Appeal from the Iowa District Court for Johnson County,
Larry J. Conmey, Judge.

The State appeals an order of the district court
declining to enter an award of child support against the
appellee. **REVERSED AND REMANDED.**

Bonnie J. Campbell, Attorney General, John Parmeter,
Assistant Attorney General, Kay Delafield, Assistant
Attorney General, and Carol Turner, Assistant County
Attorney, for appellant.

Michelle Fernandes-Miller, pro se, for appellee.

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

SCHLEGEL, P.J.

Michelle and Guillermo Arones were married in Lima, Peru, on June 26, 1981. They had a son, Paul Arones, on September 26, 1981.

Michelle and Guillermo later moved to the United States. They were divorced in Johnson County, Iowa, on April 15, 1986. The decree awarded Michelle custody of Paul and ordered Guillermo to pay child support of \$150 per month.

Contrary to the terms of the dissolution decree, it appears that Paul did not actually live with Michelle, but lived with Guillermo and his sister. In April 1988 Paul began to receive benefits of \$333 per month under the Aid for Dependent Children program (ADC). As a result of Paul receiving benefits, in November 1988 the Child Support Recovery Unit (CRSU) filed a petition against Michelle under Iowa Code chapter 252A to establish a support order.

A modification order to the dissolution decree was entered on February 17, 1989. The court found that Paul had been living with Guillermo since the time of the original decree. At the time of the modification Michelle was married to Brian Miller and had taken the name Michelle Fernandes-Miller. She was then attending Kirkwood Community College and earned about \$250 per month working part-time. Guillermo was then employed as a bartender and was also attending Kirkwood. The court modified the decree to give Guillermo physical care of Paul. Michelle was ordered to pay child support of \$25 per month.

The CSRU later decided to pursue its earlier petition against Michelle. A hearing was held on January 24, 1991. At the time of the hearing Michelle was working at the University of Iowa Hospital and had gross income of approximately \$14,375 per year, or net income of \$836 per month. She also had a part-time job from which she earned gross income of \$151 per month. At the time of the hearing Guillermo was again unemployed and receiving ADC benefits.

The district court determined that applying the child support guidelines would substantially impair Michelle's ability to purchase the necessities of life. The district court therefore declined to enter an order requiring Michelle to pay support greater than \$25 per month. The court denied the State's motion filed under Iowa Rule of Civil Procedure 179(b). The State has appealed.

This case was heard in equity, and our review is de novo. State ex rel. Blakeman v. Blakeman, 337 N.W.2d 199, 201 (Iowa 1983). We give weight to the trial court's fact-findings, especially when considering the credibility of witnesses, but are not bound by them. Id.

In cases where an increase in child support payments is sought by the State on behalf of a minor, the petitioner is not required to prove a change of circumstances after a previous dissolution award, but must only persuade the court that respondent can afford to pay more than provided for in the original decree. State ex rel. Mohr v. Mohr, 377 N.W.2d 247, 248 (Iowa App. 1985). Iowa Code chapter

252A provides an independent additional or alternative civil remedy. Blakeman, 337 N.W.2d at 203. In an action under chapter 252A, the court may award more or less support than is awarded in the dissolution decree. State ex rel. Department of Human Services v. Uebler, 417 N.W.2d 224, 225 (Iowa App. 1987).

In our de novo review, we determine Michelle has the ability to pay more than \$25 per month, the amount provided for in the modification decree. We find the child support guidelines should have been applied in this case. In establishing the guidelines, the supreme court undertook to balance the needs of children against the legitimate needs and expenses of the payor parent. State ex rel. Department of Human Services v. Burt, 469 N.W.2d 669, 670 (Iowa 1991). Thus, unless special circumstances are revealed by the record, the obligor's reasonable living expenses will furnish no ground for departure from the presumptively correct guideline amount. State ex rel. Epps v. Epps, 473 N.W.2d 56, 58 (Iowa 1991). We therefore cannot agree with the district court's finding that, due to Michelle's living expenses, substantial injustice would result from application of the guidelines.

We apply the most current guidelines. Id. We find Michelle has net income of \$836 per month. Under the guidelines Guillermo's public assistance benefits are not considered income to him. Michelle's child support obligation should be \$211 per month. This is the total

amount she should be paying for child support, and the \$25 per month she is already paying under the modification decree should be deducted, making her additional obligation \$186 per month.

We therefore reverse the district court and remand to that court to enter an order increasing Michelle's child support obligation by \$186 per month, so that her total child support obligation is the amount mandated by the child support guidelines, \$211 per month.

REVERSED AND REMANDED.