IN THE COURT OF APPEALS OF IOWA

No. 1999-550 (9-811) / 98-2277
Filed May 10, 2000

IN RE THE MARRIAGE OF LORI DENISE GORDY
AND CURTIS GEAN GORDY

FILED
MAY 10 2000
CLERK SUPREME COURT

Upon the Petition of
LORI DENISE GORDY,
Petitioner-Appellee,

And Concerning
CURTIS GEAN GORDY,
Respondent-Appellant.

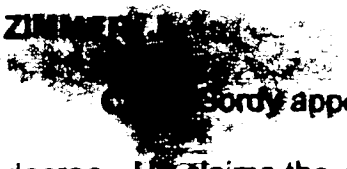
Appeal from the Iowa District Court for Jefferson County, James P. Reilly, Judge.

Curtis Gordy appeals the child support provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Thomas M. Walter of Johnson, Hester, Walter & Breckenridge, L.L.P., Ottumwa, for appellant.

Richard J. Bell of Bell Law Office, Mt. Pleasant, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.



Gordy appeals the child support provision of the parties' dissolution decree. He claims the court should not have attributed overtime income to him. He also claims the district court should have considered Lori Gordy's earning capacity. We affirm as modified.

Curtis is employed as a machinist with Meritor Automotive, Inc. He has a base salary of about $32,950. Due to working overtime hours, in 1996 and 1997 he earned about $45,000. Lori is employed part time cleaning office buildings. She has annual income of $2400.

The district court entered a dissolution decree for the parties on November 5, 1998. The court granted the parties joint custody, with Lori having primary physical care of the parties' two children. The court ordered Curtis to pay child support of $966.88 per month. The court based Curtis's child support obligation on findings he had annual income of $45,000 and Lori had income of $2400.

The standard of review accorded equitable actions concerning support orders is de novo. *In re Marriage of Griffin*, 525 N.W.2d 852, 853 (Iowa 1994). In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Overtime pay should be included in the calculation of net income for child support purposes. *Griffin*, 525 N.W.2d at 853. Only when overtime pay is speculative or uncertain, or where a parent is forced to work overtime to meet a burdensome child support obligation, may overtime pay be excluded from the

guideline calculation. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993) (citing *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992)).

Curtis contends the district court should not have attributed overtime income to him. We find Curtis worked overtime during recent years. In 1996 he earned $44,645 and in 1997 he earned $45,365. Also, on the date of the hearing, October 1, 1998, overtime hours were available with his employer. We determine the district court properly based Curtis's child support obligation on his base pay plus overtime pay, giving Curtis net monthly income of about $2810.

Curtis also asks us to impute income to Lori as if she worked full time. Lori presently works only about thirty hours per month, earning six dollars per hour. We determine Lori has the ability to work full time. She testified she was planning on obtaining a full-time job. Furthermore, the record indicates she has a high school diploma, she is in relatively good health, and the children are both school age. In some circumstances, it is appropriate for us to consider earning capacity rather than actual earnings when applying the child support guidelines. *See In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 1997).

If Lori worked full time earning six dollars per hour, she would have annual income of $12,480. We determine Curtis's child support obligation should be calculated as if Lori had net monthly income of $913 per month. We apply the child support guidelines, and determine Curtis should pay child support of $916 per month.

We modify the parties' dissolution decree to require Curtis to pay child support of $[redacted] per month for the parties' two minor children. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.