IN THE COURT OF APPEALS OF IOWA

No. 6-590 / 95-1430

**IN RE THE MARRIAGE OF SUSAN ANN MASSICK AND JEFFREY ALLEN MASSICK**

**Upon the Petition of**
**SUSAN ANN MASSICK,**

Petitioner-Appellee,

**And Concerning**
**JEFFREY ALLEN MASSICK,**

Respondent-Appellant.

FILED
DEC 20 1996
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Monroe County, James D. Jenkins, Judge.

Jeffrey Massick appeals the child support and visitation provisions of the parties' dissolution decree. **AFFIRMED.**

Daniel J. Jay of Drake & Jay, Centerville, for appellant.

Robert M. Box of Box & Box, Ottumwa, for appellee.

Considered by Habhab, P.J., and Huitink and Vogel, JJ.

**PER CURIAM**

This is an appeal by a father challenging the child support and visitation provisions of the parties' dissolution decree. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Susan and Jeffrey Massick were married in 1992. The have one child, Kelsey, born in February 1993. Kelsey was born with congenital cataracts and continues to have poor vision. Susan is employed as a respiratory therapist at the Monroe County Hospital. She has net monthly income of about $1,100. During the marriage Jeffrey was employed at the Tracy Elevator, where he had net monthly income of $1,170.

Jeffrey is an alcoholic. He was previously convicted of operating while intoxicated, third offense. *See State v. Massick*, 511 N.W.2d 394 (Iowa 1994). He was on probation for this crime during the marriage. While the dissolution was pending, he was arrested for parole violations, possession of a firearm by a felon, and public intoxication, third offense. He was incarcerated at the time of the dissolution hearing.

The district court issued a dissolution decree for the parties on July 18, 1995. The court granted Susan sole custody of Kelsey. The court did not grant Jeffrey any visitation. Jeffrey was ordered to pay child support of $263 per month, which was based on his previous income at the Tracy Elevator. Jeffrey now appeals.

I. Jeffrey contends the district court should have ordered him to pay minimal child support of $50 per month, rather than basing his child support obligation on his income prior to incarceration. A party may not claim inability to pay child support when that inability is self-inflicted or voluntary. *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993). A parent's incarceration may be considered a self-inflicted inability to pay child support. *See In re Marriage of Vetternack*, 334 N.W.2d 761, 763 (Iowa 1983). We conclude the district court properly ordered Jeffrey to pay child support based on his income prior to his incarceration.

II. Jeffrey asks to have visitation with Kelsey. He points out that Iowa Code section 598.41(1) provides that, generally, it is in a child's best interests to have continuing contact with both parents following a dissolution. In the present case, Jeffrey could not presently exercise visitation because of his incarceration, and it was unclear when he would be released from prison. As the district court indicated, Jeffrey could apply for visitation when he is released. We affirm the district court on this issue.

III. Finally, Jeffrey asks to have a provision added to the dissolution decree which would allow him to arrange for blood testing to determine paternity. During settlement negotiations the parties' had agreed to such a provision. A stipulation between parties is not binding, however, unless approved by the court. *In re*

*Marriage of Gordon*, 540 N.W.2d 289, 291 (Iowa App. 1995). We agree with the district court's decision not to approve this portion of the stipulation.

We affirm the decision of the district court. Costs of this appeal are assessed to Jeffrey.

**AFFIRMED.**