IN THE COURT OF APPEALS OF IOWA

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No. 7-400 / 96-694

IN RE THE MARRIAGE OF JOHN THOMAS GEAR AND LINDA MARIE GEAR

Upon the Petition of
JOHN THOMAS GEAR,
Petitioner-Appellant/Cross-Appellee,

And Concerning
LINDA MARIE GEAR,
Respondent-Appellee/Cross-Appellant.

FILED
SEP 24 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge.

The petitioner appeals, and respondent cross-appeals, the district court's orders modifying the original decree and finding petitioner in contempt. **AFFIRMED AS MODIFIED.**

Dan T. McGreevey, Fort Dodge, for appellant.

[redacted] of Larson, Childs, Hall & Christensen, P.C., Harlan for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The petitioner, John Gear, appeals, and respondent, Linda Heckman, cross-appeals, the district court's orders modifying the original decree and finding John in contempt.

Background facts. John and Linda Gear were married in 1986. They had two children, Joshua, born in 1989, and Candace, born in 1991. The parties' marriage was dissolved by decree in August of 1993. Pursuant to the decree, Linda was awarded physical care of the two minor children. John was ordered to pay $510.15 per month in child support and to provide transportation for visitation.

On modification, the district court increased John's child support obligation to $642 per month. The court further found John in contempt for failure to pay the disputed medical bills and that such failure was willful. The court awarded Linda $300 in attorney fees for the modification action and $300 for the contempt action. The court denied John's request to have Linda provide some of the transportation for visitation. John has appealed, and Linda has cross-appealed, requesting an award of $3325 [redacted] and $1500 for appellate attorney fees.

[redacted] respect to the contempt issue, we look to see if the trial [redacted] supported by substantial evidence [redacted] we review the trial court's legal conclusions [redacted] of law. *In re Marriage of Swan*, 526 N.W.2d 320, 326-27 (Iowa 1995) (citing *State v. Duncanson*, 485 N.W.2d [redacted] 496-97 (Iowa 1992)). We review the rest of this equity action de novo. Iowa R. App. P. 4. We

have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Contempt charge. John argues the district court erred in finding he was in contempt of court. He notes he offered into evidence extensive calculations indicating what he believed was the proper amount of unpaid medical expenses. He maintains any differential was a mistake in calculation.

We recognize two defenses in a contempt proceeding: (1) indefiniteness of the order; and (2) absence of willfulness in disobeying the order because of inability to pay. *Webb v. Iowa District Court for Johnson County*, 416 N.W.2d 95, 97 (Iowa App. 1987) (citing *Bevers v. Kilburg*, 326 N.W.2d 902, 904 (Iowa 1982)). We find the language of the order clear:

> ORDERED, ADJUDGED AND DECREED that [John] shall keep in effect the major medical and health insurance policy for the benefit of the children . . . . [A]ny deductible on the children and any medical, dental, or optical expenses not covered by insurance shall be divided equally and paid for by the parties within 60 days after its occurrence unless otherwise agreed . . . .

Linda presented [redacted] with substantial documentation of the medical expenses incurred on behalf of the children. John's last payment to Linda was in January of 1995, with trial in March of 1996 and a delinquency outstanding. John's excuse of

miscalculations was rejected by the trial court and by us as well. Thus, the first contempt defense is not available to John.

The second defense excuses a contemnor for inability to pay. John failed to pay when he had the ability to do so. He earned substantially more than Linda (his average gross income over three years was $28,610, while Linda's average gross income over three years was $11,854), and he had the ability to pay his fifty-percent share of the children's unreimbursed medical needs. Moreover, John received insurance checks for medical costs incurred by Linda and failed to forward these reimbursement payments to her, effectively "pocketing" these checks for eight months. Thus, the second contempt defense is not available to John. We therefore find the district court did not err in holding John in contempt as there is substantial evidence in the record to support the district court's findings.

II. Transportation costs. John next contends Linda should be required to pay one-half the transportation costs during visitation. At the time of the original decree, Linda was living in Adair and John in Fort Dodge, about 1 ½ hours' drive apart Later, [redacted] and John moved to Eldora, making the drive about three hours [redacted] is then whether these moves are a substantial change in circ[redacted] shift from John providing the transportation to allocating some of the transportation time and expense to Linda.

John urges us to adopt a policy on how the expense and time involved in transportation for visitation should be allocated between the parents. He suggests several options, including:

1. A parent moving some distance must provide the transportation; or

2. A parent receiving the visiting child provide that leg of the transportation; or

3. Parents meet half-way.

Each suggestion may be logical and practical under certain circumstances. Transportation is an issue that surfaces frequently and the courts strive to do equity between parties for the best interests of the children. *See In re Marriage of Bonnette*, 431 N.W.2d 1, 3 (Iowa App. 1988); *In re Marriage of Bonnette*, 492 N.W.2d 717, 722-23 (Iowa App. 1992). However, it would be impractical for us to establish such a policy. Each visitation entails unique family situations that only can be resolved on a case-by-case basis. A visitation transportation policy could be counter-productive.

In this case, John put more distance between him and the children than Linda did. Nonetheless, both parties moved a relatively short distance to find better jobs. Regular visitation is not seriously impaired by either parent's move. We modify the trial court ruling to provide that each party be responsible for one-half the transportation.[1]

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[1] This can be accomplished, for example, by John driving to Linda's to pick up the children and Linda picking up the children at John's at the end of the visitation or vice versa. Alternatively, John and Linda could meet half-way to exchange the children. These are

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III. Child support calculation. John lastly asserts his child support obligation should be $537.22 per month pursuant to the child support guidelines, not $642 per month. John claims (1) his gross income is lower than the amount the court attributed to him; (2) he is entitled deductions for court-ordered dependent medical expenses: and (3) he is entitled to deductions for court-ordered life insurance. We disagree.

In calculating net income, the Child Support Guidelines do not allow for life insurance deductions nor do they allow any deduction for John's share of uncovered dependent medical expenses. *See* Iowa Code section 252E.1(7) (defining "medical support" deducted under the Guidelines, not including sums paid as a party's share of expenses not paid by insurance).

Concerning John's allegation his gross income is less than the court calculated, the court was correct when it combined his gross annual income of $33,000 with his additional earnings as an ambulance driver in 1995. We therefore find the court's calculation was correct, and the $642 per month child support figure is accurate under the Guidelines.

IV. Attorney fees. An award of attorney fees is not a matter of right, but rests with [redacted] *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa [redacted] the needs of the party making the request, the ability of the [redacted] party to pay, and whether the party making the request was obligated to [redacted] do not consider the changing liabilities and needs of the parents and children.

defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). Under Iowa Code section 598.24, if a party is found in contempt, the cost of the contempt proceeding including reasonable attorney fees may be taxed against the party in contempt.

A. Trial attorney fees. Linda requests $3325 for the modification and contempt proceedings. Although there is evidence in the record regarding attorney fees, the trial court did not find John to be more than $200 in arrears in reimbursement of medical expenses. We do not find the trial court abused its discretion in limiting attendant attorneys fees to $300 to pursue the contempt issue and $300 for the modification.

B. Appellate attorney fees. Linda requests that she be awarded appellate attorney fees in the amount of $1500. As Linda was obligated to defend the trial court's decision on appeal, and has successfully done so, excepting the transportation costs issue, we award Linda appellate attorney fees in the amount of $1000.

Having carefully considered all issues before us, we affirm the district court's decision as to the contempt issue and child support calculations, we modify the transportation costs issue as well as the district court's ruling regarding attorney fees.

AFFIRMED AS MODIFIED.