

IN THE COURT OF APPEALS OF IOWAS

No. 8-338 / 97-1183

Filed August 28, 1998

**STATE OF IOWA, ex rel. IOWA
DEPARTMENT OF HUMAN SERVICES,
DIANE M. POCHINSKI, n/k/a DIANE
M. ANDERSON, o/b/o JESSICA POCHINSKI,**
Appellant,

vs.

SCOTT SHANK,
Appellee.

Appeal from the Iowa District Court for Webster County, Joel E. Swanson,
Judge.

Petitioner appeals the district court's ruling modifying a child support order
entered pursuant to Iowa Code chapter 252A (1985). **AFFIRMED.**

James W. McCarthy, Fort Dodge, for appellant.

Steven E. Ballard of Leff, Hauptert, Traw & Willman, L.L.P., Iowa City, for
appellee.

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

STREIT, J.

Diane Pochinski, mother of Jessica Pochinski, appeals from the trial court's order that Scott Shank, Jessica's father, be reimbursed for the \$5326.04 he overpaid in child support by crediting Shank \$147.95 per month for thirty six months. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Diane Pochinski and Scott Shank are the parents of Jessica, born May 2, 1982. The couple never married. In 1985, Scott was ordered to pay \$70 per month in child support.

In 1989, pursuant to the parties' stipulation, the district court modified the support order to require Shank to pay \$150 per month in child support. In 1992, the district court entered an order for mandatory income withholding. Shank was in arrears \$1190. The court ordered his employer to withhold \$300 from Shank's paycheck each month; \$150 for current child support and \$150 for past child support until his delinquency was cured. Shank's employer continued to deduct an extra \$150 of child support after Shank had paid his \$1190 arrearage in full.

In 1996, Pochinski filed a petition for modification alleging a Shank's increased income was a substantial change of circumstances which warranted modification of his child support obligation. Shank alleged he should be reimbursed for his \$5326.00 overpayment. The court found Shank's increased income warranted a modification of his child support to \$340.15 per month. The court ordered Shank be reimbursed for his \$5326 overpayment by deducting \$147.95 each month from his

child support obligation of \$340.15, making his payment \$192.20 for thirty-six months. Pochinski filed a rule 179(b) motion which was denied.

We review this equitable proceeding de novo. Iowa R. App. P. 4; *Lemmon v. Hendrickson*, 559 N.W.2d 278, 279 (Iowa 1997). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented, giving weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

It is undisputed Shank overpaid his child support payment by \$5326.04. It is undisputed Pochinski received the overpayments. Pochinski argues the district court deviated from the child support guidelines by ordering Shank to be reimbursed. Her argument is without merit. The court determined Shank's child support obligation under the guidelines to be \$340.15 per month. The court did not deviate from the guidelines in setting Shank's obligation. The issue of reimbursement for overpayment is separate from setting Shank's child support obligation. Shank is entitled to be reimbursed for support payments made in excess of the amount he was ordered to pay by the court. *See State ex rel. Dep't of Human Services v. Cottrell*, 513 N.W.2d 765, 769 (Iowa 1994).

AFFIRMED.