FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

324

STATE OF IOWA, ex rel. DIANA L. WILSON,

Petitioner-Appellee,

vs.

LAWRENCE J. MONTAG,

Respondent-Appellant.

Filed November 30, 1983

3-311
83-148

Appeal from Scott District Court, Margaret S. Briles, Judge.

Respondent-father appeals from judgment in a support action pursuant to Iowa Code chapter 252A, asserting that the amount of child support ordered was inequitable. AFFIRMED.

Francis J. Lange, Dubuque, for respondent-appellant.

Thomas J. Miller, Attorney General, and E. Dean Metz, Assistant Attorney General, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

OXBERGER, C.J.

Respondent-father appeals from judgment in a support action pursuant to Iowa Code chapter 252A, asserting that the amount of child support ordered was inequitable. We affirm.

Pursuant to a 1977 Illinois dissolution decree, respondent-father was ordered to pay $15 per week "from his unemployment compensation check" for each of his two children now aged eleven and nine. In 1982 the State brought a support action on the mother's behalf pursuant to Iowa Code chapter 252A. Respondent testified that he stopped receiving unemployment compensation approximately four months after the divorce and that he had been employed only sporadically since. Although he had experience in general labor, sales, route sales, truck driving, warehouse, and tree service work, he was currently unemployed with his only income consisting of $452 per month in food stamps and ADC benefits received by his present wife. The trial court found that respondent was capable of being employed and ordered him to pay $30 per week child support, the same amount ordered at the time the dissolution decree was entered.

I. Child Support

This action is in equity and we find the facts anew; we give weight to the findings of the trial court but are not bound by them. Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1981).

Larry claims the trial court failed to properly consider his lack of means and destitute circumstances in ordering that he pay $30 per week child support. He also contends the amount was not a fair and reasonable sum according to his means. See Iowa Code §§ 252A.3(2); 252A.6(11). Our de novo review of the record clearly indicates that Larry is healthy and capable of being employed. Although he testified that he is not able to find work, he has qualifications in numerous work areas. He has managed to obtain credit from several different institutions

over the past several years. We are cognizant of the fact that Larry is unemployed, but that does not make the need of his children any less. Considering that Larry is capable of working and that Diana's financial situation is as tenuous as his, we cannot say that the trial court abused its discretion in reaffirming the original support amount ordered in the decree of dissolution.

AFFIRMED.