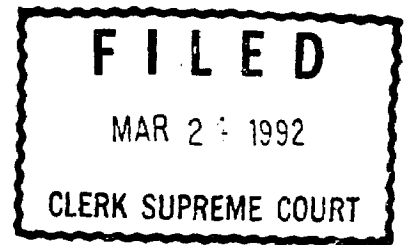


IN THE COURT OF APPEALS OF IOWA

No. 2-023 / 91-582



IN RE THE MARRIAGE OF PATRICIA WAGNER AND THOMAS WAGNER

Upon the Petition of
PATRICIA WAGNER,

383

Appellee,

And Concerning
THOMAS WAGNER,

Appellant.

Appeal from the Iowa District Court for Linn County,
Thomas M. Horan, Judge.

Thomas appeals the economic provisions of the parties'
dissolution decree. **AFFIRMED AS MODIFIED.**

Thomas J. Wagner, Danville, Virginia, pro se.

Susan K. Seiler of Legal Services Corp., Cedar Rapids,
for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Thomas and Patricia Wagner were married in Iowa on May 24, 1974. They have two children: Derrick Wagner, born September 25, 1982, and Christopher Wagner, born June 25, 1984. The district court dissolved the parties' marriage in February 1991. The dissolution decree placed the children in joint legal custody and in Patricia's primary physical care. Both children have special medical and educational needs; Christopher has a learning disability, and Derrick is autistic. Derrick receives \$147 per month in social security income.

During the marriage, Patricia was primarily a homemaker. She has held a number of low income jobs in the past. Patricia is currently unemployed and is living in low-income housing. Her income consists of child support and public assistance benefits. Patricia expresses a desire to obtain a special needs master's degree to enable her to find employment working with handicapped children.

Thomas has an associate degree in business and has attended approximately two additional years of college. Thomas is employed by Goodyear Tire and Rubber Company on a full-time basis and currently resides in Danville, Virginia. The district court found Thomas earned approximately \$36,000 per year and had a net monthly income of \$2308.41.

Patricia and the two minor children moved from Danville, Virginia, to Cedar Rapids, Iowa, on or about May

3, 1987, and Thomas remained in Danville, Virginia, where he currently resides. The parties own homestead property in Danville, Virginia, and have agreed this property will be sold and the equity divided between them.

The dissolution decree directed Thomas to pay Patricia child support in the amount of \$858.72 per month "commencing March 1, 1991, and continuing until the minor children of the parties reach the age of 18 or graduate from high school, whichever occurs later, or until said minor children marry, die or become self-supporting, whichever occurs first." The decree directed Thomas to pay Patricia rehabilitative alimony in the amount of \$200 per month commencing March 1, 1991, and continuing for a period of forty-eight months. The decree ordered Thomas to pay all transportation expenses between Virginia and Iowa to exercise his visitation rights with the parties' two children.

On appeal, Thomas contends the trial court incorrectly arrived at a net monthly income of \$2308.42 because it failed to consider that he does not earn the same amount each week due to temporary layoffs, union dues, and life insurance deductions. He argues his correct net monthly income is \$2032.17, which represents \$2232.17 per month minus the \$200 per month spousal support award. He asks that his child support obligation be reduced to \$50 per week in the event of a strike or layoff for a period of more than a week. Thomas also requests he be exempted from

paying any child support during the months of June and July because of the extensive travel costs of exercising his visitation rights. In addition, he asks that Patricia be required to pay child support to him during June and July when the children are staying with him.

Alternatively, Thomas contends that no spousal support should have been awarded to Patricia. He argues Patricia has held a number of jobs that are neither part time nor minimum wage and that she quit her last job prior to dissolution of the marriage. Finally, Thomas asks that Patricia pay all incidental medical bills. He also asks that extensive medical bills recently presented to him for payment are not covered by insurance and should be paid from the proceeds of the sale of the parties' house in Virginia before the equity is divided.

In response, Patricia argues Thomas presents issues and new evidence on appeal that were not raised in the trial court. She claims Thomas primarily raised issues related to custody in the trial court and on appeal he raises issues regarding the unjustness of the economic provisions of the divorce decree. She contends she is deprived her right to rebut the new issues and evidence Thomas is trying to introduce on appeal.

Contrary to Patricia's belief, our review in this equity case is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew 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 witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). We find Thomas does not present new issues on appeal. Child custody and child and spousal support were all before the trial court.

Thomas first argues the court erred in its determination of his net monthly income. We find the court properly based its findings on Thomas's income statements and testimony. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984) (citation omitted). Expenses properly deductible from gross income as set forth in the Iowa Child Support Guidelines of December 31, 1990, were deducted. Additionally, Thomas believes the court failed to consider his loss of annual earnings due to temporary layoffs and his medical support costs. The record does establish Thomas earns a gross annual income of \$36,000. We find the net monthly income determination by the district court was equitable considering the entire record. The court properly applied Thomas's net monthly income of \$2308.41 to the child support guidelines.

Thomas next contends the court should have considered child support payments made to Patricia as her income. We determine the court's exclusion of child support payments for the purposes of determining Patricia's income was a correct application of the guidelines.

Thomas also argues Patricia should pay all medical bills not covered by insurance. He claims Patricia has waited over a year to send him several medical bills such that they are no longer covered by his insurance. The trial court ordered Thomas to pay all health and dental costs not covered by his insurance. We affirm this award, but clarify its terms. In the future, Patricia shall pay those incidental medical expenses not covered by insurance due to her failure to present the medical bills promptly or to properly follow other insurance procedures.

Finally, Thomas claims the result of the economic portions of the decree is that he is denied visitation with his children. We do not upset the basic medical cost allocation nor spousal support, but we do modify the decree. According to the child support guidelines, there is a

rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such adjustment necessary to provide for the needs of the children and to do justice between the parties under the special circumstances of the case.

We believe Derrick's social security income of \$147 per month should be considered in the support determination here. An adjustment is necessary to do justice between the parties under the special circumstances of this case. We accordingly reduce Thomas's monthly child support payment of \$858.72 by this amount. Thomas shall pay \$711.72 per

month. When only Christopher is eligible for support, Thomas shall pay monthly support of \$596.

In addition, the trial court ordered Thomas to pay all the expenses of transportation to implement his weekend and summer visitation. The court ordered weekend visitation to occur in the Cedar Rapids area. We determine both parties should pay transportation for summer visitation. Thomas shall pay the expenses to get the children to Virginia, and Patricia shall pay to return them to Iowa. The parties may arrange to meet each other half way.

We affirm the trial court in all respects except we order Patricia to pay medical expenses not covered by insurance due to her lack of diligence and to share in the visitation transportation expense, and reduce Thomas's child support in view of Derrick's monthly social security income.

AFFIRMED AS MODIFIED.