IN THE COURT OF APPEALS OF IOWA

No. 7-549 / 96-1453

000275

STATE OF IOWA, ex. rel. VALERIE RENE DANIELS and VANESSA MARIE DANIELS, Minor Children,
Appellee,

vs.

MARIANN RENEE JOSLIN,
Appellant.

FILED
DEC 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

Respondent appeals the district court's order setting the amount of her child support obligation and determining the amount of past due child support. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, and M. Elise Pippin, Assistant Attorney General, for appellee.

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

VOGEL, J.

Mariann Joslin is the noncustodial parent of two minor children who have received state aid. The Child Support Recovery Unit applied for a Chapter 252C hearing to determine Mariann's child support obligation. Although currently unemployed, Mariann earned $1920.00 in gross monthly income at her prior job. The district court used Mariann's earning capacity, rather than her current income, in determining her child support obligation pursuant to the current guidelines.

Mariann appeals, arguing the court erred in setting her current and accrued support obligations because it used her "earning capacity" without making a finding that using her current income would result in substantial injustice or that adjustments are necessary to provide for the needs of the children and to do justice between the parties.

It is appropriate to consider earning capacity rather than actual earnings in applying the Uniform Child Support Guidelines. *In re Marriage of Flattery*, 537 N.W.2d 801, 803 (Iowa App.1995). This approach, however, requires a finding that the use of actual earnings would create a substantial injustice or that adjustments are necessary to provide for the needs of the children and to do justice between the parties. *In re Marriage of Raue*, 552 N.W.2d 904, 906 (Iowa App. 1996). The district court made no such finding.

Determining child support under the guidelines is actually a two-step process. The first step is to apply the custodial and noncustodial parents' actual incomes to the child support guidelines. *In re Marriage of Spears*, 529 N.W.2d 299, 303 (Iowa App. 1994). Mariann has no income and would owe no child support. However, the policy of the state is that every parent contribute to his or her child's support, so some child support is required, but the amount is discretionary. *See* Child Support Guidelines (July 1, 1995). The amount of money Mariann could earn if employed is one factor, but not the only factor, to consider to determine the amount of child support she should pay. *Spears*, 529 N.W.2d at 303. In our *de novo* review of the record, we determine Mariann's monthly earning capacity to be the same as she earned in her previous employment. Mariann presented no expert medical testimony concerning her alleged medical problems. We have only her testimony that she cannot earn a comparable amount now. Based on the record before us, we find that using Mariann's current income would create a substantial injustice and that using her earning capacity of $1920.00 per month is necessary to provide for the needs of her children. We therefore set her monthly child support obligation pursuant to the current guidelines at $519.

AFFIRMED.