IN THE COURT OF APPEALS OF IOWA

No. 4-007 / 92-1972

JEFFREY SCOTT SPIES,

Petitioner,

vs.

TAMMY WALTZ-SCHACHTNER,

Respondent.

TAMMY WALTZ-SCHACHTNER,

Petitioner-Appellant,

vs.

JEFFREY SCOTT SPIES,

Respondent-Appellee.

FILED
SEP 16 1994
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cedar County, David J. Sohr, Judge.

Tammy Waltz appeals from an order establishing child support and visitation concerning the parties' child. **AFFIRMED IN PART, AND MODIFIED.**

C. Joseph Coleman, Jr. of Mitchell, Coleman, Perkins & Enke, Fort Dodge, for appellant.

L. Jeffrey Zearley, Tipton, for appellee.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

CADY, J.

This is an appeal by Tammy Waltz-Schachtner from a district court order which established Jeffrey Spies as the father of Alyssa Waltz. The order also granted custody to Tammy, set child support and visitation, and entered a judgment for birthing expenses. Tammy argues the district court used incorrect information to compute the child support obligation, failed to award full reimbursement for her medical expenses, failed to include a provision for life insurance, made no provision for continued support during college, and failed to impose adequate restrictions on Jeffrey's consumption of alcohol during visitation. We affirm with modification.

Tammy and Jeffrey maintained a fourteen-month relationship. It resulted in the birth of Alyssa Waltz on March 12, 1990. On January 9, 1991, Jeffrey filed a petition to establish custody and visitation rights. He acknowledged paternity, and was granted temporary visitation.

Tammy subsequently filed a petition to establish support for Alyssa. In May 1992, the parties agreed Jeffrey would pay $215.00 per month in temporary support. The two cases were consolidated for trial.

Jeffrey acknowledged at trial he failed to pay child support for Alyssa. He visited Alyssa once before filing his petition, and visited her five times out of twenty-six possible visits since the entry of the temporary visitation

order. Jeffrey was convicted of assault causing bodily injury in January 1992 and was ordered to participate in substance abuse treatment. He has been seen drinking alcoholic beverages since that time.

The district court entered an order granting Tammy physical custody of Alyssa. It noted "Jeffrey's police record, history of violence, substance abuse, and employment history" and concluded he was "unwilling to make appropriate decisions or to accept adult responsibility." The court found Jeffrey earned $7.00 per hour and set child support at $204.00 each month, beginning September 18, 1992. The district court also ordered Jeffrey to reimburse Tammy for one-half of Alyssa's medical and birthing expenses not covered by insurance ($1391.65). Jeffrey was awarded graduated visitation beginning with eight hours every other weekend, followed by overnight visits, before assuming full weekend visits and holidays.

I. Scope of Review

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

II. Child Support Guidelines

The court is required to determine the amount of child support based on the child support guidelines adopted by

the Iowa Supreme Court. In re Marriage of Van Zee, 488 N.W.2d 721, 723 (Iowa App. 1992). There is a rebuttable presumption that the amount of child support determined under the guidelines is the correct amount of child support to be awarded. Brown, 487 N.W.2d at 333. A variance is not permitted without a written finding that the guidelines would be unjust or inappropriate.

The district court ordered child support payments of $204.00 each month. This was based on an income level for Jeffrey of $7.00 an hour, together with the assumption that 25% of his gross wages would be withheld for tax purposes. The parties stipulated at trial, however, that Jeffrey worked forty hours each week, and was paid $8.00 an hour. The trial court erred in selecting the hourly wage figure of $7.00 an hour. We find Jeffrey's net monthly income is $1,040.00 per month. Tammy's net income is $1,367.68 per month. Based on the guidelines, the child support should be $234.00 per month.

In this case, Tammy provides health insurance for Alyssa through her employer at a biweekly cost of $79.00. This amount was included in determining her net income under the child support guidelines, but it did not increase the amount of child support paid by Jeffrey. We believe Jeffrey should share in the cost of medical insurance for Alyssa. In making an award of child support in actions to establish paternity and support, courts have discretion to include medical support. Iowa Code § 675.25 (1991). This

supports a deviation from the child support guidelines. Accordingly, we conclude Jeffrey shall pay additional monthly support of $86.00. He shall also pay one-half of all noncovered and deductible medical, dental, and optical costs.

III. Past Medical Expenses

The district court ordered Jeffrey to pay one-half of the birthing expense. Tammy asserts the district court should have also ordered Jeffrey to pay an equal share of the medical expenses for Alyssa that resulted from subsequent problems with her hearing. Tammy introduced exhibits showing these medical bills totaled $3,371.07. Most of the medical expenses were incurred shortly before trial. Tammy testified, however, her health insurance will cover most of the bills. Courts have discretion to order an amount for the past maintenance of a child. We conclude Tammy failed to meet her burden to establish the amount of the unpaid medical bills, and we are unable to determine the obligation of Jeffrey for the past maintenance of Allysa. The district court correctly limited the award to the expenses incurred in connection with the birth of Allysa.

IV. Life Insurance

Tammy argues Jeffrey should be ordered to obtain life insurance to secure the child support payments in the event of his death. The court has discretion in ordering security for child support payments. Iowa Code § 675.42 (1991).

We conclude the financial situation of the parties does not allow for additional expenses for insurance. Furthermore, Alyssa would receive social security benefits in the event of Jeffrey's death.

V. Child Support for College Education

Tammy argues the trial court erred in failing to order child support to continue in the event Alyssa chooses to pursue a higher education degree. We decline to address the issue at this time. We reserve jurisdiction in the trial court to determine the issue when Alyssa expresses a desire to pursue a higher education degree.

VI. Conditional Visitation

Tammy claims Jeffrey should be ordered to make a showing he has satisfactorily controlled his substance abuse problem as a condition to exercising visitation. Our courts have declined to impose similar limitations in the past. In re Marriage of Fite, 485 N.W.2d 662, 664 (Iowa 1992). The court concluded in Fite that such a condition was demeaning and an invitation to abort scheduled child visitations based on subjective determinations. Id. There was insufficient evidence in the record to show Jeffrey abuses alcohol during his visits. The situation should be carefully monitored, but specific conditions are not necessary at this time.

In conclusion, we modify the order of the district court to increase the monthly child support to $234.00 plus $86.00 each month as medical support. We also modify to

require Jeffrey to pay, during the time he is required to pay child support, one-half of the medical, dental, and optical costs incurred by Alyssa which are not covered by the health insurance policy maintained by Tammy.

Costs of this appeal shall be paid by Jeffrey.

AFFIRMED IN PART, AND MODIFIED.