IN THE COURT OF APPEALS OF IOWA

No. 4-452 / 94-0091

FILED
NOV 28 1994
CLERK SUPREME COURT

STATE OF IOWA, DEPARTMENT OF HUMAN SERVICES, ex rel. CRYSTAL WILLIAMSON, a Child,

Petitioner-Appellee,

vs.

MELINDA WILLIAMSON,

Respondent-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

Melinda Williamson appeals a judgment of the district court ordering her to pay $150 per month for child support and $15 per month towards reimbursement to the State for $5500 in ADC payments. **AFFIRMED AS MODIFIED.**

Susan K. Seiler of the Legal Services Corp., Cedar Rapids, until her withdrawal, and then Susan Dulek of the Legal Services Corp., Iowa City, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Robert R. Huibregtse, Assistant Attorney General, and Joaquin Jones, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

The question in this appeal is whether the trial court abused its discretion in fixing child support for an unemployed noncustodial mother and whether the trial court correctly determined the amount and manner of payment by the mother for reimbursement of Aid to Families with Dependent Children received by the father. We affirm as modified.

The mother, Melinda Williamson, is the mother of four children. Three children are in Melinda's care. This proceeding concerns support for her second child, Crystal Williamson, who lives with her biological father. Crystal was born in June 1987. At the time of Crystal's birth, Melinda had custody of Crystal and her older sister and Melinda was receiving Aid to Families with Dependent Children. In 1988, Crystal went to live with her father, Crystal's father was not then and is not now employed. He receives Aid to Families with Dependent Children. Crystal continued to receive Aid to Families with Dependent Children until 1990. Melinda is now married and has two other children who, together with her oldest child, are in her care. Melinda is not employed outside the home. Her husband, the father of her two younger children provides the sole support for Melinda and the three children who live with them. He earns about $19,000 annually.

The child support recovery unit sought contribution from Melinda for Crystal's support. The trial court

entered an order finding Melinda pay $150 a month for current support and $15 a month to reimburse prior support paid Crystal's father. The trial court found at the time of the hearing Crystal's father had received aid in the amount of $23,351 in the sixty-one months Crystal had been in his custody. The trial court found Melinda should reimburse the state $5550 of that amount.

Melinda appeals contending the support order was excessive. Melinda first contends the district court should not have imputed income to her but should have instead used her actual income. Melinda also advances the amount of child support allocated is not fair because it fails to consider she has limited education, no employment experience outside the home, and substantial child care responsibilities for the three children in her home now aged ten, four, and three. Melinda further contends the court should impute income only on a showing that it reflects a person's current earning capacity. The State argues the court is empowered to assess child support based on a parent's earning capacity and where a person is unemployed but employable the cases support imputing income.

Fixing child support is a two-step process. The first step is to apply the custodial and noncustodial parents' actual income to the child support guidelines. Neither of Crystal's parents have income, consequently, this results in no fixed percentage coming from the tables. The policy

of the state is every parent contribute to his or her child's support. See Uniform Child Support Guidelines (Dec. 31, 1990). Some child support is required. Id. Under the circumstances of this case, the amount of child support is discretionary. See id. The second step, therefore, is to assess the situation to determine what is appropriate. The State advances we should impute earnings to Melinda of $678 a month based on a minimum wage and a normal work week. The amount of money Melinda could earn if gainfully employed is one factor, but not the only factor, to consider to determine the amount of child support she should pay. We agree that Melinda's current ability to generate income is severely limited by her minimal education, lack of job experience, and care responsibilities for three children. See In re Marriage of Montgomery, 521 N.W.2d 471, 474 (Iowa App. 1994) (this court did not rely on earning capacity for a noncustodial mother who was staying home to care for a child from another father). We distinguish this case from a situation where a noncustodial parent refuses to work or does not seek work. See State ex rel. Lara v. Lara, 495 N.W.2d 719, 722 (Iowa 1993); In re Marriage of Vetternack, 334 N.W.2d 761, 763 (Iowa 1983); In re Marriage of Fogle, 497 N.W.2d 487, 489 (Iowa App. 1993).

Melinda has assumed responsibility for three children. Two children are the children of her current husband who is supporting them and her without outside aid. The third

child is Melinda's from another relationship and this child is being supported, without outside help of any kind, by Melinda's current husband. Clearly, Melinda's current husband owes no support obligation to Crystal. However; the fact Melinda's new husband is supporting Melinda is relevant to her overall financial condition and in fixing the amount Melinda should contribute to the support of Crystal. See Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974); In re Marriage of Smith, 501 N.W.2d 558, 561 (Iowa App. 1993).

Given Melinda's limited education, lack of job experience, and substantial child care responsibilities, her ability to contribute is limited. Melinda's husband is providing Melinda support and she can obtain some part-time employment. We consider these factors in fixing her support. We modify to decrease Melinda's support obligation to $100 a month. Eighty-five dollars of which shall go to current support and fifteen dollars of which shall go to past support.

We affirm as modified. Costs on appeal are taxed one-half to Melinda and one-half to the state.

AFFIRMED AS MODIFIED.