IN THE COURT OF APPEALS OF IOWA

No. 2-034 / 91-720

FILED
AUG 27 1992
CLERK SUPREME COURT

STATE OF IOWA, ex rel., MARIJKE LARAE MILLER, A Minor, by **ANN ELIZABETH MILLER,** Her Mother and Next Friend,

Petitioner-Appellee/Cross-Appellant,

vs.

KEVIN DEAN DONAHUE,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Benton County, William L. Thomas, Judge.

Kevin Donahue appeals, and the State cross-appeals, a district court order establishing paternity and child support. **AFFIRMED AS MODIFIED.**

Morris L. Eckhart of Milroy & Eckhart, Vinton, for appellant.

Bonnie J. Campbell, Attorney General, John Parmeter and Kay Delafield, Assistant Attorneys General, and Carol Turner, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

In October 1989, the State, through the Child Support Recovery Unit, filed a petition against Kevin Donahue to establish paternity and child support on behalf of Marijke Miller. Marijke was born on May 15, 1984, and is the daughter of Ann Miller. Ann began receiving public assistance in July 1984.

Kevin has one child, Amanda, from a previous marriage which ended in 1981. Kevin currently has custody of Amanda. His ex-wife is required to pay $20 per week in child support. Amanda apparently requires psychiatric counseling. Kevin's insurance does not cover this expense.

Kevin married his present wife, Rochelle, in 1985. They have two children. Kevin works as a pipe-fitter for ALL TRI-R, Inc. in Illinois. He earns $14 per hour base pay and $21 per hour for overtime. Kevin had gross income of $37,647 in 1990. His net income was $29,325, or about $2,444 per month.

Ann lives in Vinton, Iowa, with Marijke and her two children from a subsequent relationship with Darrell Dvorak. Ann was not employed at the time of the hearing, but stated she planned to look for a job in the fall of 1991, when two of her children would be in school. Ann does not receive any financial assistance from Darrell, who was also unemployed.

The district court determined Kevin was the father of Marijke. Kevin has not appealed that finding. The court

applied the child support guidelines for three children and then divided that amount by three to determine Kevin's child support obligation for Marijke. Kevin was ordered to pay $362 per month. Kevin has appealed and the State cross-appealed.

This case was heard in equity, and our review is de novo. State ex rel. Blakeman v. Blakeman, 337 N.W.2d 199, 201 (Iowa 1983). We give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. Id.

We note that after the district court issued its decision, the Iowa supreme court set forth the rule that application of the child support guidelines should be based on the number of children who live in the custodial parent's household and can legally claim both parties as parents. See Gilley v. McCarthy, 469 N.W.2d 666, 668 (Iowa 1991). In the present case only one child living with Ann, Marijke, can claim both Kevin and Ann as parents. Thus, the guidelines for one child should have been used.

We are not convinced by Kevin's arguments that application of the guidelines here will result in substantial injustice. In establishing the guidelines, the supreme court undertook to balance the needs of children against the legitimate needs and expenses of the payor parent. State ex rel. Department of Human Services v. Burt, 469 N.W.2d 669, 670 (Iowa 1991). The guidelines already take into account the reasonable living expenses of the noncustodial parent. Id.

The fact that an obligor has other children to support is not sufficient to establish that the guideline amount is inequitable. State ex rel. Epps v. Epps, 473 N.W.2d 56, 58 (Iowa 1991). We find Kevin's expenditures for Amanda's psychiatric counseling and his legal fees for a modification of his 1981 dissolution decree are not so extraordinary as to justify a departure from the child support guidelines.

We have already found Kevin's net monthly income is $2,444. This figure takes into account his family health insurance premium, which the State agrees should be deducted from his gross income. Ann's public assistance benefits are not considered in applying the guidelines. Application of the guidelines for one child shows Kevin must pay $630 per month for the support of Marijke.

We therefore modify the district court's order to increase Kevin's child support obligation to $630 per month. Costs of this appeal are assessed to Kevin.

AFFIRMED AS MODIFIED.