FILED
FEB 25 1998
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 7-351 / 96-1104

IN RE THE MARRIAGE OF RHONDA J. BEECHER AND MARK R. BEECHER

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Upon the Petition of
RHONDA J. RUPERT, f/k/a **RHONDA J. BEECHER,**
Appellant,

And Concerning
MARK R. BEECHER,
Appellee.

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge.

Rhonda appeals the child support provisions of the parties' dissolution of marriage decree. **AFFIRMED AS MODIFIED.**

Roger J. Hudson and Stacey N. Warren of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellant.

Robert H. Laden and Gregory D. Brandt of Hyland, Laden & Pearson, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Vogel and Mahan, JJ., but decided en banc.

VOGEL, J.

Rhonda appeals the child support provisions of the parties' dissolution of marriage decree. She argues: (1) the court abused its discretion in deviating from the child support guidelines; and (2) the court's reasons for deviating are not supported by the record.

Background facts. The Beechers were divorced in 1991. The parties had four boys, Rhett, Beau, Jeremy, and Marcus; however, only Jeremy and Marcus were minors at the time of the dissolution. The court awarded the parties joint legal custody of the two youngest boys and awarded Mark primary physical care. In December 1995 the court modified the decree to award Rhonda primary physical care.

In a supplemental order, the court ordered that Mark pay child support in the amount of $1500 per month for one year beginning in May 1996. The court provided that child support be decreased to $1200 beginning May 1, 1997, until the older child, Jeremy, becomes eighteen or graduates from high school at which time Mark was ordered to pay $720 per month until the youngest child, Marcus, becomes eighteen or graduates from high school.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on 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 the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984).

I. Minimum guideline support. In setting the amount of child support the district court found Mark had a base annual income of $139,200 ($7,228 net monthly income). Rhonda's net monthly income was $906. The child support guidelines indicated a support order of $1972 per month (which is 27.5% of Mark's net monthly income), but it set support at $1200 per month, plus 25% of any bonus Mark receives. Mark testified some bonus was guaranteed.

The court found these reasons to deviate from the guidelines: 1) Mark's contributions to Rhett's college expenses; 2) Mark's housing costs in California; 3) Mark bearing a large portion of the transportation costs for the boys' visitation in California; 4) Mark's agreement to pay all medical bills and medical insurance; 5) the guidelines amount exceeded what it cost to raise the boys; and 6) deviation would not create a hardship for Rhonda as she had remarried and was in a successful relationship.

Rhonda argues the court's deviation from the guidelines constitutes an abuse of discretion and its reasons for deviation are not based on the record.

The amount of support provided by the guidelines is presumptively valid, however, the amount is rebuttable and may be adjusted upward or downward under the special circumstances of each case. *See In re Marriage of Axmear*, 529 N.W.2d

304, 306 (Iowa App. 1995); *accord In re Marriage of Powell*, 474 N.W.2d 531, 533 (Iowa 1991).

Effective July 1, 1995, the Revised Child Support Guidelines provide the amount of child support for a non-custodial parent with net monthly income in excess of $6,000 per month is within the "sound discretion of the court." However, "the amount of support payable by a non-custodial parent with a net monthly income of $6,001 or more *shall be no less than* the dollar amount as provided for in the guidelines for a non-custodial parent with a monthly net income of $6,000," which, considering Mark and Rhonda's income, amounts to $1650 in child support. (Emphasis added.)

We find the trial court abused its discretion when it ordered Mark to pay $1200 per month to support the parties' two minor children.[1] A plain reading of the guidelines reveals the trial court had only the discretion to order support over and above $1650 per month. To go below this amount, as the trial court did, runs contrary to the mandate of the guidelines.

Discretionary range. Within the discretionary range of $1650 and up, we examine the trial court's basis for exercising its discretion.

A. College expenses. While it is commendable Mark has substantially contributed to Rhett's college expenses, and also contributed to Beau's expenses

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[1] Mark does not argue that any bonus he may receive should be considered to push the $1200 amount of support over the $1650 floor and into the discretionary area of support.

when he was in college, our focus is on the support amounts calculated for the two children still at home, Jeremy and Marcus.

B. Housing costs and attendant costs in raising children. The guidelines are structured to take a parent's reasonable living expenses into account in determining support. *See State of Iowa ex rel. Dep't of Human Serv. v. Burt*, 469 N.W.2d 669, 670 (Iowa 1991) (stating "the guidelines already take into account the reasonable living expenses of the noncustodial parent, the very subject which prompted the district court to depart from the guidelines. In the absence of special circumstances, the reasonable living expenses of the noncustodial parent do not provide a ground for departing from the guidelines."); *see also In re Marriage of Gordon*, 540 N.W.2d 289, 292 (Iowa App. 1995) (noting the guidelines "take into account the reasonable costs of living, including educational expenses, for dependant children . . . . [W]e believe expenses for clothes, school supplies and recreation activities are considered . . . ."). In addition to Mark's gross annual income of $139,200, Mark receives significant employee benefits. Two such benefits include an auto allowance of $400 per month and a home subsidy of $1,197 per month. Neither of these cash benefits were included in determining Mark's net monthly income for calculating child support. Therefore, to adjust child support based on the high cost of living in California, leaves out of the equation two sources of income specifically intended to offset the cost of living.

C. Transportation. The trial court ordered Mark to pay for 80 percent of the transportation costs for the four scheduled visits each year and that Rhonda was only responsible for 20 percent of such costs. The court made this allocation of transportation costs proportionately burdensome to Rhonda and Mark based on the ratio of their incomes. For the share of costs to be considered again in determining child support effectively creates a double economic burden for Rhonda.

D. Medical expenses. The guidelines specifically state that "[a]ny premium cost of a health benefit plan or medical support plan which has *not* been considered in computing net monthly income may be considered by the court as a reason for varying from the child support guidelines." (Emphasis added.) The trial court incorrectly considered Mark's costs of medical insurance *already accounted for* in the calculation of Mark's net monthly income as a reason for varying from the guidelines. The trial court in fact allowed a double-deduction for health insurance not contemplated by the guidelines. However, we do note Mark is responsible for paying all uncovered medical expenses for the boys. The child support should be adjusted to account for this factor.

E. Rhonda's remarriage. The trial court determined its deviation from the guidelines would not create a hardship for Rhonda since she has remarried. The trial court was correct in considering this factor.[2]

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[2] However, if this factor was used to lower child support below $1650, its use was improper.

Conclusion. Having carefully considered all arguments and the record before us, we conclude the district court abused its discretion in ordering Mark to pay $1200 (plus a portion of Mark's bonus) per month in child support. On our de novo review of the record, we order Mark to pay $1650 per month (plus 25% of any net bonus received) from May 1, 1996. The support shall decrease to $1122 per month (plus 15% of any net bonus received) when Jeremy becomes 18 years of age or graduates from high school, which ever is later. Such support shall continue until Marcus becomes 18 years of age or graduates from high school, which ever is later.

Costs on appeal are assessed to Mark.

AFFIRMED AS MODIFIED.

All judges concur, except Sackett and Huitink, J., who dissent.

SACKETT, J. (dissenting)

I respectfully dissent. I agree with the majority Mark's income places him in the area where the child support guidelines provide: "[T]he appropriate figure is deemed to be within the sound discretion of the court . . . . The amount of support payable by a non-custodial parent with a monthly net income of $6001 or more shall be no less than the dollar amount as provided for in the guidelines for a non-custodial parent with a monthly net income of $6000." This amount is $1650. Contrary to the majority opinion, the trial court did not order support below that amount. The trial court did not fix support below this amount because the trial court additionally ordered Mark to pay twenty-five percent of his bonuses.

Mark is guaranteed a ten percent bonus which would result in a monthly support obligation of $2147.50; and he could receive a twenty percent bonus resulting in a monthly support obligation of $2301.25.

I do not find the trial court abused its discretion in considering the factors it did to determine the support it fixed. I do not find cases cited by the majority concerning discretion in departing from support where the income of the non-custodial parent is less than $6001 applicable because the discretion of the trial court is considerably broader in looking at fixing support above $1650 in this case.

College expenses paid for children outside the custodial home should be considered in this assessment, as well as Mark's generosity to his children in a number of other ways. Child support obligations are established to give children adequate

support. They are neither punitive nor is it their intent to provide income for the custodial parent. Inequities there are corrected in the allocation of property and in alimony awards. Mark has been generous and fair with his children in a number of ways, and based on his history one can conclude he will offer extra help to the younger boys when they reach college age.

I would affirm the trial court.

Huitink, J., joins in this dissent.