

IN THE COURT OF APPEALS OF IOWA

No. 0-069 / 09-1089
Filed February 24, 2010

TERRANCE DWAYNE WALKER,
Petitioner-Appellant,

vs.

DANA JO DEMOSS,
Respondent-Appellee.

Appeal from the Iowa District Court for Story County, Timothy J. Finn,
Judge.

Petitioner appeals the district court decision increasing his child support
obligation. **AFFIRMED.**

Terrance D. Walker, Ankeny, appellant pro se.

Thomas J. Miller, Attorney General, Christina F. Hansen and Justin
Walker, Assistant Attorneys General, for the Child Support Recovery Unit.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

A father appeals from an order entered by the district court which modified his child support obligation as recommended by the Iowa Child Support Recovery Unit (CSRU) in an action initiated under Iowa Code chapter 252H (2009). Upon our review, we affirm the district court.

Terrance Walker and Dana DeMoss are the parents of Akira, who was born in 1993. Terrance and Dana never married. The district court entered an order in 1995 establishing paternity, awarding the parties joint legal custody, and placing Akira in Dana's physical care. The court established a visitation schedule for Terrance and ordered him to pay child support of \$135.67 per month.¹ At the time the paternity decree was entered, Terrance expected to graduate from Iowa State University in May of 1996. The level of child support ordered in 1995 remained unchanged for the next fourteen years.

In March 2009, the CSRU conducted a review of Terrance's child support obligation. Based on its review, the CSRU recommended that child support be increased to \$199.14 per month.² Terrance's tax return showed he had annual income of \$14,513.04. Dana did not respond to the CSRU's request for information; however, the CSRU obtained information that Dana was receiving \$445 per month in Social Security disability benefits, and \$249 per month in Supplemental Security Income. The amount of child support was calculated using \$1209.42 for Terrance's monthly gross income, and \$445 for Dana's

¹ In calculating the child support obligation, the district court assumed that Terrance and Dana were each capable of holding a minimum wage job.

² CSRU is currently providing services to enforce the support obligation in this case. Support is assigned to the State.

monthly gross income. Terrance disagreed with the CSRU's child support calculation and requested a hearing before the district court.

The record reveals that a review hearing was held before the district court on May 28, 2009. Dana was given notice of the hearing but did not attend. Terrance appeared at the hearing and represented himself. The CSRU attorney presented a child support guidelines worksheet and a document titled "Iowa Department of Human Services Verification of Social Security Information," which showed the amount of Dana's Social Security disability benefits.³ At the hearing, Terrance argued the CSRU had not presented sufficient evidence to show Dana's total monthly income. He suggested that Dana could be earning income in addition to the Social Security disability benefits she was receiving. He claimed the evidence presented at the hearing was insufficient to show his child support obligation should be increased.

The district court entered a decision on June 2, 2009, increasing Terrance's child support obligation to \$199.14 per month. The court utilized the recommended amount of support calculated by the CSRU. The court denied Terrance's post-trial motion. Terrance now appeals.

A petition for review and adjustment of a child support obligation is heard as an ordinary civil action in equity. *State ex rel. Weber v. Denniston*, 498 N.W.2d 689, 690 (Iowa 1993). Our review of an action in equity is de novo. Iowa R. App. P. 6.907 (2009).

³ Iowa Code section 252B.7(4) clarifies that the CSRU attorney represents and acts exclusively on behalf of the State. The CSRU attorney does not represent any party other than the State regardless of the name in which the action is brought. *Hanson v. Flores*, 486 N.W.2d 294, 295-96 (Iowa 1992).

On appeal, Terrance renews his claim that the evidence presented at the hearing in district court was insufficient to justify a modification of his child support. He argues the CSRU did not present any evidence to show that Dana's total monthly income was solely from Social Security disability benefits. He contends that without more complete information concerning Dana's income, the court should not have found there had been a substantial change in circumstances. In the alternative, he argues the court should have imputed to Dana the median income for a female in Iowa, \$2564.92 per month.

The Iowa child support guidelines require a determination of the net monthly income for each parent. *Spencer ex rel. Spencer v. White*, 584 N.W.2d 572, 574 (Iowa Ct. App. 1998). A parent's net monthly income is determined from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991); *In re Marriage of Hagerla*, 698 N.W.2d 329, 331 (Iowa Ct. App. 2005). The court must carefully consider all of the circumstances relating to the parents' income. *In re Marriage of Hart*, 547 N.W.2d 612, 615 (Iowa Ct. App. 1996).

In this case, the record included a summary of the State's findings regarding the parents' income and a recommended increase in Terrance's support obligation. The CSRU presented evidence of Dana's income in the form of a written, signed statement from the Social Security Administration. That document showed Dana was receiving \$445 per month in Social Security disability benefits and \$249 per month in Supplemental Security Income. Terrance testified he had a conversation with Dana on April 27, 2009. He

testified that Dana told him she paid \$630 per month in rent. Terrance stated, “She didn’t tell me exactly what she makes total from all of the sources of income that she has.” He did not identify any sources of income that he believed should be attributed to Dana.

Social Security disability benefits are properly considered as income in determining child support. *In re Marriage of Belger*, 654 N.W.2d 902, 906 (Iowa 2002) (quoting *In re Marriage of Hilmo*, 623 N.W.2d 809, 811 (Iowa 2001)). On the other hand, Supplemental Security Income is a form of public assistance, and is not income for purposes of calculating child support. *In re Marriage of Benson*, 495 N.W.2d 777, 781 (Iowa Ct. App. 1992); see also Iowa Ct. R. 9.5 (“Gross monthly income does not include public assistance payments or the earned income tax credit.”). Terrance does not contend that Dana’s supplemental Security Income should have been included in her monthly income for purposes of calculating his child support obligation.

Upon our de novo review of the evidence presented at the hearing, we conclude the district court properly modified Terrance’s child support obligation. Terrance does not dispute that his income is \$14,513.04, the amount shown on his 2007 tax return. Because Dana did not submit a financial statement, the CSRU searched for “other sources” to determine her income.⁴ The State then learned that Dana was receiving regular monthly disability benefits from the Social Security Administration in the amount of \$445 per month. On appeal, Terrance does not contend that Dana is not receiving monthly disability benefits.

⁴ If a parent fails to submit financial information to CSRU, CSRU is allowed to use “other sources” to determine that parent’s income. Iowa Code section 252B.7A(1)(b), (c).

However, he argues the State failed to show Dana's total monthly income is solely from social security disability. Therefore, he argues the evidence is insufficient to justify a modification of child support. We disagree. The information provided by the Social Security Administration reveals that Dana has been receiving disability benefits since 2003. Dana's eligibility to receive benefits means that the Social Security Administration has found her to be disabled.⁵ Nothing in the record suggests that Dana has other income which should be considered in calculating Terrance's child support obligation. We conclude the district court was justified in determining Dana's income based on the information presented at the hearing.

Under the child support guidelines, Terrance's child support obligation should be \$199.14 per month. This is a deviation of more than twenty percent from the amount he had been paying.⁶ See Iowa Admin. Code r. 441-99.62(3)(a)(1) (providing that procedures to adjust a child support obligation may be initiated when the "[p]resent child support obligation varies from the Iowa Supreme Court mandatory child support guidelines by more than 20 percent." We conclude the district court properly found there had been a substantial change in circumstances.

⁵ The controlling federal law defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 416(i)(1) (2004); see also 20 C.F.R. § 416.905(a) (2003).

⁶ Terrance had previously been paying \$135.67. A variation of twenty percent from that amount would be \$162.80. Clearly, the obligation to pay \$199.14 is more than a twenty percent increase from \$135.67.

Terrance's argument concerning the median income of a female in Iowa was not presented to the district court. We conclude this issue has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

We affirm the decision of the district court.

AFFIRMED.