IN THE COURT OF APPEALS OF IOWA

No. 0-190 / 09-1615
Filed April 8, 2010

STATE OF IOWA, ex rel. C.J.P.,
Minor Child,
Petitioner-Appellee,

vs.

DEREK JOHN PEISEN,
Respondent-Appellant,
and

DEBRA ANN WILLIS,
Respondent-Appellee.

Appeal from the Iowa District Court for Bremer County, Christopher C. Foy, Judge.

A father appeals a district court's order for him to pay $681 per month in child support, contending (1) the district court should not have included his overtime pay in his gross income and (2) the district court afforded the child's mother an excessive child care deduction. **AFFIRMED.**

Karen L. Thalacker of Gallagher, Langlas & Gallagher, P.C., Waverly, for appellant.

Thomas J. Miller, Attorney General, Cheri Damante Cummings, Assistant Attorney General, and Kasey E. Wadding, County Attorney, for appellee State.

Ethan D. Epley of Dillon Law P.C., Shell Rock, for appellee Debra Ann Willis.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Debra Willis and Derek Peisen are the parents of a young child. Willis has custody of the child. When the child was approximately four, the Child Support Recovery Unit requested a court hearing to determine Peisen's support obligation. *See* Iowa Code § 252C.4 (2009). Following a hearing, the district court ordered him to pay $681 per month. Peisen appealed.

On appeal, Peisen contends (1) the district court should not have included his overtime pay in his gross income and (2) the district court afforded Willis an excessive child care deduction. Our review is de novo. *Markey v. Carney*, 705 N.W.2d 13, 19 (Iowa 2005).

I. Overtime Pay

"Overtime wages are within the definition of gross income to be used in calculating net monthly income for child support purposes." *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992). However, "where overtime pay appears to be an anomaly or is uncertain or speculative, a deviation from the child support guidelines may be appropriate." *Id.* The burden is on the recipient of the extra income to prove that the extra income is "anomalous, uncertain, or speculative." *Markey*, 705 N.W.2d at 20.

Peisen contends he met this burden. While he acknowledges he received overtime pay for his work as a mechanic at a manufacturing facility, he asserts his extra work hours were all voluntary and are likely to diminish. He points to a letter from a supervisor stating that global economic conditions drastically reduced the facility's ability to offer overtime, and cost-cutting measures would be

implemented with a goal of reducing overtime to zero. He also contends that his own overtime hours were significantly reduced in 2009.

The record may support these assertions.[1] Nonetheless, Peisen admitted he was consistently working "[a]pproximately eight hours extra a week" in 2009. In *Brown*, the Iowa Supreme Court held that consistent overtime pay of this nature was not anomalous or speculative. *Brown*, 487 N.W.2d at 334. *Cf. In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 333 (Iowa Ct. App. 2005) (finding overtime pay "ha[d] not been consistent and will not be consistent"). Based on this holding, we similarly conclude that the district court acted equitably in including Peisen's overtime pay in his gross income. If Peisen's employer does indeed eliminate overtime as the supervisor projected, Peisen has the option of filing an action to modify his support obligation. *See Markey*, 705 N.W.2d at 20 (stating that father of a child was "free to bring a modification action" if his income were to change in an attempt to lower his child support obligation).

II. Child Care Deduction

In arriving at net monthly income, a parent may deduct from gross income the "[a]ctual child care expense while custodial parent is employed." Iowa Ct. R. 9.5(10). The Child Support Recovery Unit determined that Willis's child care expenses were $148.71 per month. This figure was based on "a statement from the childcare provider as to the amount that Ms. Willis paid from January of 2009

[1] Peisen's September 6, 2009 pay stub showed that he had already earned $63,270.86 in taxable income for 2009, even though the year was only slightly more than two-thirds over. The child support calculation was predicated upon Peisen earning annual income before deductions of $73,486, only $10,000 more than Peisen had already earned in the first eight months of the year.

to July of 2009." Willis testified that she did not disagree with that amount. She noted, however, that she was receiving a State subsidy to assist with day care expenses and that the subsidy would end when she began receiving child support from Peisen. Specifically, she testified that, with the subsidy, she paid $2.45 per five-hour period of childcare and that without the subsidy, she would pay $2.50 per hour. Apparently based on this testimony, the district court increased Willis's child care deduction from the figure recommended by the Child Support Recovery Unit to $288 per month. This increase reduced her net monthly income and increased Peisen's monthly child support obligation by $11.

Peisen maintains that the district court should have left the child care deduction at $148.71, as recommended by the Child Support Recovery Unit. He points to the absence of documentation that the subsidy would end. We note, however, that counsel for the State did not have any information about the effect of the subsidy on Willis's child care expenses, leaving Willis's detailed testimony on this issue intact. The district court apparently found this testimony convincing, as it was elicited through the court's questioning. *See Markey*, 705 N.W.2d at 20 (noting that because the district court included a commission in a father's income for the purposes of calculating child support, it must not have found "convincing his testimony that his continued receipt of commission was speculative"). Accordingly, we accept the child care deduction figure found by the court and affirm the child support obligation of $681 per month.

AFFIRMED.