

IN THE COURT OF APPEALS OF IOWA

No. 0-212 / 09-1029
Filed May 26, 2010

**STATE OF IOWA, ex rel.,
SHANEEN D. MOORE,**
Petitioner-Appellee,

vs.

TRACY JEROME MCCAMPBELL,
Respondent-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

Tracy McCampbell appeals from the district court's order modifying child support. **AFFIRMED AS MODIFIED AND REMANDED.**

Robert J. Engler of Schulte, Hahn, Swanson, Engler & Gordon, Burlington, for appellant.

Shaneen D. Moore, Robbinsdale, Minnesota, pro se appellee.

Thomas J. Miller, Attorney General, Human Services Division, for appellee.

Heard by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On May 16, 1991, the district court entered a ruling declaring Tracy McCampbell to be the natural father of Treshaun McCampbell and ordering Tracy to pay child support. Tracy was never married to Treshaun's mother, Shaneen Moore, and the parties never lived together as a family. Treshaun has always lived with Shaneen. On November 27, 2007, Shaneen filed a petition to modify child support requesting that the court require Tracy to provide support for Treshaun indefinitely beyond his eighteenth birthday.¹ At the time of trial, Treshaun was nineteen years old and physically developed, with a height of 6'4" and weight of 170 pounds. Shaneen's argument for continuing child support was based on Treshaun's diagnoses of autism spectrum disorder, developmental cognitive disability, and speech/language impairment as well as her assertion that Treshaun was "unable to be a self-supporting adult, and will require a lifetime of support from his parents." Tracy agreed that Treshaun required constant supervision and was not capable of living independently.

The district court found that, pursuant to Iowa Code section 252A.3(3) (2007), Tracy has an obligation to provide support for Treshaun for so long as Treshaun remains in Shaneen's care. To determine the amount of support Tracy would owe, the district court found that it is "impossible to know exactly what portion of Shaneen's monthly expenses are directly attributed to Treshaun." Instead, the district court determined Treshaun's needs by reference to the

¹ The district court had previously modified the child support order, but those modifications are not at issue on appeal.

income of an individual earning minimum wage for full time work, a gross monthly income of \$1257. The court considered that Treshaun received Supplemental Security Income (SSI) benefits of \$424 per month and that if each parent contributed that same amount, Treshaun would have a total of \$1272 available for his support, an amount comparable to the income of a person earning minimum wage. Therefore, the district court ordered Tracy to pay support for Treshaun in the amount of \$424 per month.

Tracy appeals from the district court's ruling, arguing: (1) as a parent of a child born outside of wedlock, he is under no statutory obligation to provide support beyond the age of eighteen pursuant to Iowa Code section 600B.39; (2) if he does have a support obligation, the district court must take into consideration the need for support based on actual expenses; and (3) the district court erred in concluding that receiving support would not affect Treshaun's SSI benefits.

II. Standard of Review

We review actions to modify child support *de novo*. *In re Marriage of Raue*, 552 N.W.2d 904, 906 (Iowa Ct. App. 1996). We give weight to the findings of the trial court, but are not bound by them. *Id.*

III. Statutory Child Support Obligation

We agree with the district court that Tracy is obligated to provide support for Treshaun into his adulthood.

Iowa Code section 252A.3(3) states, "The parents are severally liable for the support of a dependent child eighteen years of age or older, whenever such

child is unable to maintain the child's self and is likely to become a public charge.”

Tracy relies on the distinction between Iowa Code sections 252A.3(9) and 598.1(9) in making his argument. Section 252A.3(9) provides guidance regarding the duration of support obligations for a child born out of wedlock, stating,

If paternity of a child born out of wedlock is established . . . [t]he support obligation shall include support of the child between the ages of eighteen and nineteen years if the child is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

Section 598.1(9) provides guidance for support payments for married parents who are dissolving their marriage, specifying the same duration for parental support obligations, but also including a continuing obligation: “and may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.”

Tracy argues that the legislature's decision to include language providing for the support of a dependent adult child in the section applicable to married parents but not in the section applicable to unwed parents indicates the legislature did not intend that unmarried parents pay support beyond age eighteen. Tracy also argues that Iowa case law establishes that only *married* parents have an obligation to provide continued support for a child who remains dependent into adulthood. See *In re Marriage of Vrban*, 293 N.W.2d 198, 201 (Iowa 1980) (“There is no statutory requirement that married parents support their adult children except when the child suffers from some disability of mind or

body and is ‘unable to care for itself upon attaining majority.’” (quoting *Davis v. Davis*, 246 Iowa 262, 266, 67 N.W.2d 566, 568 (1954))).

We disagree with Tracy. Iowa Code section 252A.3(8) addresses parents’ support obligations to a dependent adult child born out of wedlock. It states, “The parents of a child born out of wedlock shall be severally liable for the support of the child” Section 252A.2(2) defines child to include “a dependent person eighteen years of age or over who is unable to maintain the person’s self and is likely to become a public charge.” Thus, we find that chapter 252A demonstrates that the legislature intended that parents support a dependent adult child beyond age eighteen.

Tracy further argues that section 252A.3(3), as quoted above, is inconsistent with the provisions of chapter 600B. Iowa Code section 600B.1 provides that the parents of a child born out of wedlock “owe the child necessary maintenance, education, and support.” Iowa Code section 600B.39 states, “For the purposes of this chapter, ‘*child*’ means a person less than eighteen years of age.” Section 252A.3 is not inconsistent with chapter 600B, but rather the sections are complementary to one another. The heading of chapter 600B includes a reference that states “See also chapter 252A,” indicating that chapter 252A also provides information relevant to the provisions in chapter 600B. Chapter 252A’s provisions relating to the support of dependent adults are supplementary to the support provisions in Chapter 600B and are applicable to Tracy.

IV. Amount of Support

Tracy next argues that, if he is obligated to provide support, Shaneen failed to prove a need for support and the district court erred in determining the amount of support necessary. Because we found above that, like divorced parents, unwed parents have an obligation to support their dependent adult children, we turn to case law involving divorcing parents in determining the amount of Tracy's support obligation. "Our child support guidelines do not apply to support involving dependent adult children." *In re Marriage of Nelson*, 654 N.W.2d 551, 553 (Iowa 2002). The support obligation for Treshaun is based on his need for assistance and his parents' ability to contribute to this need. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa Ct. App. 1994). Case law requires a determination of Treshaun's financial needs. See *id.* (considering individual circumstances in determining the need of a disabled adult).

A. Treshaun's Income

In assessing Treshaun's need for support, we look at his ability to be gainfully employed as well as his receipt of benefits from other sources. See *Nelson*, 654 N.W.2d at 553. The record does not show that Treshaun is currently earning wages, and his parents agree that Treshaun's ability to obtain gainful employment is limited. Tracy asserts that, while Treshaun will likely never live independently, it is likely that, at some point, Treshaun will maintain at least part-time employment. Shaneen testified that Treshaun is capable of completing low-skilled tasks and may be able to do certain types of work in the future. However, she testified that income from such a position will never be enough to support Treshaun because of his limitations. The district court found that Treshaun "will

never be able to have full-time, regular employment that would completely support him.”

In assessing Treshaun’s need for support we must also consider his receipt of SSI benefits. See *In re Marriage of Clark*, 577 N.W.2d 662, 665 (Iowa Ct. App. 1998). Tracy asserts that the district court erred in relying upon Shaneen’s testimony to determine that Treshaun’s SSI benefits of \$424 per month will not be reduced by the receipt of support from Tracy. Shaneen testified that Treshaun could receive “\$900 of additional income before it would affect his SSI.” The district court relied on this testimony, which was the only evidence admitted at trial on this issue, to determine that Treshaun could contribute \$424 per month toward his own support. Like the district court, we are limited to the record presented by the parties.

Tracy cites additional authority on appeal, which generally states that Treshaun’s SSI benefits may be reduced by some amount as a result of Tracy’s continued support payments.² Tracy paid support of \$507 per month before Treshaun turned eighteen, pursuant to a 2001 court order. We are unable, on this record, to speculate on any change in his benefits as a result of Tracy’s continued support payments.

B. Treshaun’s Financial Needs

Since Treshaun is unlikely ever to work full-time, the district court’s decision to award an amount of financial assistance comparable to the income of

² Tracy cites *Clark*, 577 N.W.2d at 665 for the proposition that SSI benefits will be reduced if the recipient obtains support from other sources. He further argues that in determining whether Treshaun qualifies for SSI, Treshaun must show that his income, which includes support payments, falls below statutory maximums. See *Clark*, 577 N.W.2d at 665 (citing 42 U.S.C. § 1382a(a)(2)(E)).

a person earning minimum wage is a standard not supported by the evidence. The record provides little direct evidence of Treshaun's financial needs above those now being met by his mother, the federal government, the Minnesota state government, and Hennepin County. Shaneen's testimony and exhibits did list categories of expenses in her monthly budget, and she requested that one-third of those expenses be designated as Treshaun's financial needs.³ The total of \$5128 in monthly expenses for all three members of her household includes \$640 designated as "other," along with car, phone, and mortgage expenses. Tracy acknowledges that utilities, food, clothing, health-related costs, recreation/entertainment, and school expenses are categories of expenses that may be attributable in some proportion to Treshaun but disagrees that several listed monthly expenses, including mortgage payments or car payments, should be considered.

Many of Shaneen's listed expenses cannot be attributed to Treshaun. However, Treshaun's needs include expenses for housing, utilities, clothing, food, health-related costs, recreation, transportation, and school. Tracy's support obligation should be calculated to include these items, of which Treshaun's one-third share each month totals \$1044.70.⁴ Considering Treshaun's SSI benefit of \$424.67, his financial needs not being met by government benefits are \$620.03.

³ Shaneen's household includes herself, her younger son, and Treshaun.

⁴ This amount is one-third of the summation of Shaneen's listed monthly expenses for mortgage; electricity, oil, and gas; clothing; meals and food; car payment; health insurance; uncovered medical/dental; recreation/entertainment; and school-related expenses.

C. Parents' Ability to Pay

We now turn to the second prong of the required calculation for support of dependent adult children, the parents' ability to pay. We agree with the district court's findings that "Shaneen's and Tracy's net monthly incomes are very comparable. There is not a great disparity in their disposable incomes." At the time of trial, Tracy and his wife were supporting two children and Shaneen was supporting her younger son and Treshaun.

Because Treshaun's parents have similar abilities to pay, they should be equally responsible for Treshaun's needs. This reasoning requires Tracy and Shaneen to share equally the amount of Treshaun's financial needs not met by his SSI benefit. The district court's ruling is modified to require Tracy to make a support payment of \$310 per month. However, we credit Tracy \$100 per month for a monthly payment that he is making to the State of Minnesota that allows Treshaun to receive the aid of a personal care assistant.⁵ Thus, Tracy's support payment is reduced to \$210 per month while he is making these payments and until he has satisfied this debt. We remand for the district court to recalculate Tracy's arrearage, if any, and fix a new monthly payment to be applied to the arrearage, in a manner consistent with this opinion.

AFFIRMED AS MODIFIED AND REMANDED.

⁵ The personal care services required an initial payment of \$15,000, which was to be split between Tracy and Shaneen. However, after Shaneen declared bankruptcy, Tracy was ordered to pay the entire debt.