

**IN THE COURT OF APPEALS OF IOWA**

No. 0-551 / 09-1650  
Filed August 25, 2010

**IN RE THE MARRIAGE OF CHRISTOPHER C. NELSON AND DAWN D. NELSON**

**Upon the Petition of  
CHRISTOPHER C. NELSON,**  
Petitioner-Appellant,

**And Concerning  
DAWN D. NELSON,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Clinton County, Mark J. Smith,  
Judge.

Petitioner appeals from the financial and support provisions of a decree of  
dissolution of marriage. **AFFIRMED AS MODIFIED AND REMANDED.**

Robert J. McGee of Robert J. McGee, P.C., Clinton, for appellant.

Jennie L. Clausen of H.J. Dane Law Office, Davenport, for appellee.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

**SACKETT, C.J.**

Christopher Nelson appeals from a decree dissolving his nearly eighteen-year marriage to Dawn Nelson. Christopher contends the district court's determination of his annual earning is erroneous as are the court's determinations of his alimony and child support obligations. We affirm as modified and remand.

**SCOPE OF REVIEW.** We review decrees of dissolution of marriage de novo. Iowa R. App. P. 6.907 (2009). We give weight to the findings of the district court, but are not bound by them. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). Prior cases have little precedential value, and we base our decision on the facts and circumstances unique to the parties before us. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991).

**BACKGROUND AND PROCEEDINGS.** Christopher and Dawn, who at time of trial were forty-one and forty-three, were married in 1991. They have three children born in 1993, 1994, and 1997. Christopher works for the State of Iowa as a state trooper. He also farms 277 acres that he cash rents and he and Dawn held a trucking business in a partnership. Dawn's work outside the home has been limited, but she has assisted with both the farming and trucking operations and had assumed substantial responsibility for the bookkeeping of the trucking operation. At the time of the dissolution hearing she was attending Clinton Iowa Community College.

The parties agreed to a division of their assets and that was approved by the district court. It appears that each party got about \$150,000 in equities and

one-half of Christopher's pension. The allocation of assets resulted in Christopher agreeing to receive the farming operation and trucking partnership, assuming the debt, and paying Dawn an equalization payment of \$30,000. Dawn in her brief argues that Christopher received more value than did she in the property settlement, noting she and Christopher disputed the value of some of the items divided. The parties both were represented by counsel when the agreement dividing assets and debts was reached and when the agreement was approved by the district court. We will not reopen the settlement issues here, and in addressing the issues raised on appeal we consider that the property division was equitable.

The parties did not agree on Christopher's income, whether or not he should pay Dawn alimony, and the amount of child support he should be obligated to pay. The district court found Christopher's annual earnings as a state trooper were \$75,000 and that he realized \$50,000 annually from his farming operation and \$25,000 from his trucking operation. The district court set Christopher's child support obligation at \$2187 a month. Dawn was awarded alimony of \$1800 a month for four years and \$1000 a month for the next four years. The alimony was to terminate on Dawn's death or remarriage.

**CHRISTOPHER'S INCOME.** Christopher contends that the district court erred in determining his annual salary as a state trooper by doubling his year-to-date salary through July 9, 2009, and in fixing his salary as a member of the patrol at \$75,000. He contends fixing his salary at \$65,456 is more consistent with the history of his earnings as reflected on this tax return.

There are five years of Christopher's and Dawn's tax returns in the record. They show that Christopher had wages in 2004 of \$46,320, in 2005 of \$47,028, in 2006 of \$47,967, in 2007 of \$50,016, and in 2008 of \$53,826. A copy of his payroll information for the pay period of June 26, 2009 to July 9, 2009 shows his two week "gross pay" to be \$2531.47 (if this were standard throughout the year his annual earnings would be twenty-six times this amount or \$65,818). His payroll information for July 10, 2009, to July 23, 2009, shows his two week "gross pay" to be \$2426.62 (if this were standard throughout the year his annual earnings would be twenty-six times this amount or \$63,092). The June 28 to July 9 payment is more than the July 10 to 23 payment because it included overtime, longevity pay, and maintenance pay not included in the July 10 to July 23 payment. We believe Christopher's argument that \$65,465 is more consistent with his annual earnings to be a valid argument and should have been the wages considered for child support purposes, and we modify accordingly.

**FARMING OPERATION.** Christopher next contends that the district court erred in determining that he has or will have net farm profit of \$50,000<sup>1</sup> from his farming operation. In arriving at that amount the district court looked at what is

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<sup>1</sup> We define the term "net farm profit or (loss)" here as it is defined on the farm schedule, cash basis. This is how the parties reported their farm income and expenses. Gross income includes sales of livestock, produce, grains and other products raised, cooperative distributions, agricultural program payments, commodity credit loans (of which there are none here), crop insurance proceeds, custom hire (of which there is none here), and other income including state and federal gas or fuel tax credits or refunds. Farm expenses do not include personal or living expenses, but include a number of expenses incurred in farming the majority of which here include cash rent, chemicals, seeds, custom and labor hire, interest, insurance, seed, depreciation, and other expenses of the farming operation. That is, the difference between gross income and deductible farm expenses is the "net farm profit or (loss)".

defined as “gross income” on the farm schedule and, without specifying amounts, considered that some personal expenses were paid “that losses were claimed for the farming operation because income over expenses went to pay agricultural loans.”

Christopher disagrees with the district court’s statement directly above. Dawn agrees with Christopher that principal payments on loans are not deductible expenses. Dawn contends that the record does not distinguish the portion of the payments that included interest so, apparently, interest on farm debt should not be considered. Interest paid on farm loans is a deductible expense. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 52 (Iowa 1999). The record is not silent on the interest paid on farm loans as it is shown as an interest expense on the Schedule F of tax returns introduced in evidence and reduced profits in all years; we consider it in determining Christopher’s income from farming.

Christopher argues he never earned \$50,000 farming in any year and that his anticipated income from farming should be determined based on an average income of his last three years. Dawn argues, based only on what she contends is the value of 2009 crops allocated to Christopher in the court-approved settlement, that he will be able to pay off all his debt on the farm with the proceeds from the sale of 2009 crops, so interest on farm debts should not be considered.

The parties' arguments are somewhat confusing and neither party gave the district court nor have they given us much assistance in addressing the parties' anticipated farm income.

There is support for determining farm income based on an average of income in prior years. In *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992), we said:

To establish a monthly income for a self-employed person or one who has fluctuating monthly income, it generally is best to use an average of income from a period that accurately reflects the fluctuations in income. A farmer produces commodities that fluctuate in value. Production may vary because of weather conditions. Farm programs have a substantial impact on a farmer's net income. These factors generally require a farmer's net monthly income be determined from an average of twenty-four to thirty-six months' income.

*See also Knickerbocker*, 601 N.W.2d at 51, where the court affirmed taking an average of farm income over a four-year period before calculating child support.

Copies represented to be copies of the parties' federal and state income tax returns with farm schedules attached for prior years 2004-2008 are in evidence. The federal return is a joint return and required that both Christopher and Dawn sign it when filed, under penalties of perjury, and that they declare to the best of their knowledge that the returns and accompanying schedules are true, correct, and complete. Both parties were involved in the bookkeeping responsibilities for the family and businesses. We therefore begin our inquiry by looking at these schedules to determine prior years' farm income. The returns in evidence show the parties reported losses on the farm operation for the tax years above. The farm schedules show (\$2585) in 2008, (\$4323) in 2007, (\$3751) in 2006, (\$14,299) in 2005, and (\$51,699) in 2004.

Dawn appears to ask us to discount all depreciation. She considers it not an expense because you do not have to write a check for it. The schedules show that the parties had a substantial amount of farm equipment, which they depreciated over its projected useful life and on which in 2008 and 2007 they also took accelerated depreciation. We believe in determining income for child support purposes that straight line depreciation is a proper deduction and that accelerated depreciation should be modified and spread out over a number of years. As the court recognized in *Gaer*, 476 N.W.2d at 329, depreciation is a cost of doing business and is recognized as such in computing both federal and state income tax liabilities. There the court said for purposes of computing income for child support purposes that the parent

should be allowed a deduction for depreciation determined under the straight line method of depreciation rather than under the accelerated method. See I.R.C. § 167(b)(1) (under the straight line method the cost of the property less its estimated salvage value is deducted in equal amounts each year over the period of its remaining estimated useful life).

*Gaer*, 476 N.W.2d at 329. The *Gaer* court noted that such an adjustment would give the parent sufficient cash flow to replace equipment by spreading the depreciation evenly over the useful life of these items rather than a substantial part of it being taken in the first years. *Id.*

The court went on to say:

In reaching this conclusion we recognize that some consideration must be given to business expenses reasonably necessary to maintain the business or occupation. This may, as here, include a reasonable allowance for straight-line depreciation. After considering these matters, the court—where warranted—should

adjust gross income<sup>[2]</sup> before applying the guidelines. Any other approach may discriminate between wage earners and self-employed persons.

*Id.*

Also, in *Knickerbocker*, 601 N.W.2d at 52, the court said:

[W]e conclude that it was proper for the court of appeals to recalculate depreciation of [parent's] personal property farming assets under a straight line method of depreciation in order to do justice between the parties. As we noted in *Gaer, id.* at 329, we believe that reasonable depreciation on farm machinery and other assets related to the farm business is an expense reasonably necessary to maintain that business, and that such expenses should be considered in calculating [a parent's] income.

We look to the excess depreciation taken. In 2008, \$19,500 was taken as a section 179 expense deduction<sup>3</sup> and in 2007 a section 179 expense of \$7820 was taken. If these amounts had been depreciated on a ten-year basis, the 2007 deductions would decrease by 9/10ths of the \$7820 or by \$7038. The 2008 deductions would increase by \$782<sup>4</sup> and then decrease by 9/10ths of \$19,500 or by \$17,550. This would result in 2007 showing a gain of \$2715<sup>5</sup> and 2008 showing a gain of \$15,747.<sup>6</sup> After having added in accelerated depreciation and taking an average for 2008, 2007, and 2006, the average income would be about

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<sup>2</sup> We interpret this as adjusting the "Net farm profit or (loss)" on the schedule F.

<sup>3</sup> This provision allows a depreciable asset to be taken as an expense in the year of purchase. It should be adjusted by dividing it by the number of years it would otherwise be taken (here Christopher contends that is five years and of 1/5 of that figure reasonably for 2008 equates to the depreciation that would be normal had it been depreciated over five years).

<sup>4</sup> In recomputing the 2007 excess depreciation the second year of depreciation would be considered in 2008.

<sup>5</sup> Decrease in deductions	\$7038
Reported loss (minus)	\$4323
Creates a profit of	\$2615

<sup>6</sup> Increase in deductions	\$882
Reported loss	\$22,585



\$4900 annually. Taking a four-year average would show average income of less than \$100 annually.

The 2009 crops had not been harvested at the time of trial and, while the district court appeared to consider the crops that would be sold in arriving at the \$50,000 figure, the court determined the gross income from these crops would be \$197,600—a figure less than the sales of crops shown on the 2008 return as \$208,523—which indicates there would be no substantial increase if any in 2009's farm income. While both parties make arguments about application of the 2009 crops we do not consider them because the crops went to Christopher in the property division, which we have deemed equitable. Further, any computation of 2009 farm income is not possible. There is an estimate of harvesting expenses and grain prices cannot be established for income purposes until sale.

Both parties agree to concede that there were some personal expenses deducted as farm expenses.<sup>7</sup> We have difficulty when a party makes an argument as here contending she should benefit financially because she and her former spouse failed to file a correct tax return. Christopher asks that we conclude that, under the best of circumstances, his farm income averages between \$6500 and \$8500. We accept his request and find the farm income to be considered \$7500 a year, which is more than we have computed the average income to be in the last four years. We modify the decree accordingly.

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<sup>7</sup> If the parties amend joint tax returns to report correct income any additional tax liability shall be divided equally.

**INCOME FROM TRUCKING COMPANY.** We have considered Christopher's arguments that \$25,000 is more income than the trucking partnership will generate. We find no reason to modify the court's determination and affirm on this issue.

**ALIMONY.** Christopher contends that Dawn should not have alimony, or if she does, it should be in a lesser amount.

"We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another." *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa Ct. App. 1994). An award of alimony depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). When determining the appropriateness of alimony, the court must consider the statutory factors enumerated in Iowa Code section 598.21A (2009). The court also considers each party's earning capacity, as well as the parties' present standards of living and ability to pay, balanced against the relative needs of the other. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Although our review of the district court's alimony award is de novo, we afford that court considerable latitude in making the determination. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We will disturb that determination only when there has been a failure to do equity. *Id.*

We do not disagree with the district court's conclusion that Dawn should have been awarded alimony. This was a long-term marriage and Dawn has been out of the workforce to accept the responsibility for the parties' three

children. Even after having modified Christopher's income, we do not see that the district court abused its discretion in the amount and duration of the alimony and we affirm.

We modify the decree to set Christopher's gross earnings as a state trooper at \$65,465. We modify to fix his farm income at \$7500 and affirm the determination of the trucking company income at \$25,000. We remand to the district court to recompute child support based on these amounts. We affirm the alimony award. We award no attorney fees. Costs on appeal are taxed one-half to each party.

**AFFIRMED AS MODIFIED AND REMANDED.**