

IN THE COURT OF APPEALS OF IOWA

No. 0-841 / 10-0049
Filed December 22, 2010

Upon the Petition of
TONYA K. WILLIAMS,
Petitioner-Appellee,

And Concerning
WADE P. HINDERKS,
Respondent-Appellant.

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

Wade Hinderks appeals from the district court's order concerning child
support. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Gary Hill and Laura Jontz of Iowa Legal Aid, Des Moines, for appellant.

Loren A. Nalean of Nalean & Nalean, Boone, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Danilson,
J., takes no part.

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

Tonya Williams and Wade Hinderks are the parents of a child born in January 2009. The parties never lived together and were never married. On February 17, 2009, Tonya filed a petition to establish, among other things, physical care and child support. On March 11, 2009, the district court entered a temporary order awarding Tonya physical care of the parties' child and requiring Wade to pay child support of \$217.60 per month.

Tonya received a Bachelor of Arts degree from Grandview College in 2006. At the time of trial, she was employed as an administrative assistant for the City of Ankeny. She worked forty hours per week and received a gross annual salary of \$40,920.

Wade graduated from Iowa State University in 1999, with a finance and entrepreneurial major. Wade worked for Principal Capital during his last year and one-half of college. Shortly after graduation, Principal downsized, and Wade left to work as an insurance sales agent for Shelter Life Insurance.

In May 2006, Wade left Shelter Life Insurance and began to sell life insurance annuities as an independent agent. Around June 2007, Wade opened his own insurance business, a sole proprietorship named "Driven Wealth." Wade's business is still in the start-up phase and therefore does not generate as much income at present as Wade earned in the past. Wade testified that as of the time of trial, he planned to continue trying to grow his business for "about another year or so." In 2006, Wade's gross income was \$35,444. In 2007, when Wade opened his new business, he incurred a net loss of \$4331. In 2008, Wade

had a net income of \$7837. Wade used figures from January 2009 through September 1, 2009, to estimate that his net income in 2009 would be \$10,920. On the basis of that projected income, Wade asserts that an application of the guidelines results in a monthly child support obligation of \$70.

After a trial on October 7, 2009, the court filed its findings of fact, conclusions of law, and ordered and directed the parties to submit post-trial child support guideline worksheets. The court stated that the guidelines should reflect Wade's ability to earn a gross annual salary of \$30,616 and found that use of Wade's actual income would result in a substantial injustice. The court stated that upon submission of these documents, it would issue a supplemental order concerning child support. In an order filed December 30, 2009, the district court set Wade's child support payment at \$377.04 per month. The court also ordered that, in addition to child support, Wade pay one-half of the child's daycare expenses, amounting to \$292.50 per month.

Wade now appeals, arguing the district court erred by: (1) using his earning capacity rather than his actual income in calculating his child support obligation and (2) ordering him to pay daycare costs in addition to his child support obligation.

II. Standard of Review

We review the amount of child support ordered by the district court de novo. *In re Marriage of Beecher*, 582 N.W.2d 510, 512 (Iowa 1998).

III. Merits

Iowa Court Rule 9.4 provides:

In ordering child support, the court should determine the amount of support specified by the guidelines. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such adjustment necessary to provide for the needs of the children or to do justice between the parties under the special circumstances of the case.

A. Imputed Income

Iowa Court Rule 9.11(4) provides:

The court shall not use earning capacity rather than actual earnings unless a written determination is made that, if actual earnings were used, substantial injustice would occur or adjustments would be necessary to provide for the needs of the child or to do justice between the parties.

The district court elected to use Wade's earning capacity rather than his actual earnings. In reaching this conclusion, the court stated:

The difficulty with fixing child support based on the guidelines is that (1) Wade clearly has an earning capacity higher than he is currently making in the "start-up" phase of his new business and (2) the court needs to realize the economic reality of a start-up business such as this . . . and if it is successful, Wade has the possibility of providing [the child] with more. . . . Although Wade should not be punished for trying to start up a business, neither should he be allowed to "justify" unreasonably low child support based on his minimal income.

The court therefore determined that Wade's net monthly income should be based on a gross annual salary of \$30,616. In reaching its conclusion, the district court noted rule 9.11(4) and stated,

[T]he court makes the determination that substantial injustice would occur to the child if Wade were allowed to use his "start-up" income for the next several years rather than paying a fair proportional

share of the child's actual expenses. Such an adjustment is necessary to provide for the needs of [the child] as well as to do justice between Wade and Tonya.

Wade contends the district court erred in basing his child support obligation on his earning capacity and that the district court's written determination "falls short of the finding required by Iowa law." Wade further asserts that the court erred in ignoring the fact that his reduction in income was not done to reduce his child support obligation and, in fact, occurred before any child support obligation existed.

First, we determine the district court's findings fulfilled the requirement in rule 9.11(4) regarding a written determination to use earning capacity. The cases cited by Wade in support of his argument that the district court's determination fell short of this statutory requirement included much less analysis than the district court provided in this case. See *In re Marriage of Guyer*, 522 N.W.2d 818, 820 n.1 (Iowa 1994) (stating the district court's finding that following the guidelines "would be inappropriate" fell "woefully short" of the statutory requirement); *In re Marriage of Hornung*, 480 N.W.2d 91, 94 (Iowa Ct. App. 1991) (finding the district court's note that it varied from the guidelines in order to enable the respondent to "clarify his debt picture" did not constitute a written finding in compliance with the statutory requirement). The district court explicitly found as required by rule 9.11(4) that if actual earnings were used, substantial injustice would occur and that an adjustment was necessary to provide for the needs of the child as well as to do justice between the parties.

Next, we find the district court properly used Wade's earning capacity to determine his child support obligation. We agree with the district court's findings

that substantial injustice would occur if the court set Wade's child support obligation at \$70. Tanya's monthly expenses for herself and for the parties' child total \$2945, including \$585 per month in daycare expenses. Her net monthly income is \$2822. We agree that an adjustment of Wade's income is necessary to provide for the child's needs and to do justice between the parties. Use of Wade's actual earnings would require Tonya to pay more child support than the parties' respective financial situations warrant, resulting in an injustice to Tonya.

We acknowledge that Wade's reduction in income occurred before he met Tonya and certainly before his child support obligation was in place. However, our primary consideration is the best interests of the child. See Iowa Ct. R. 9.3. The district court's conclusion is further supported by Wade's agreement at trial to pay support outside of the guidelines equal to the obligation in the temporary order. We affirm the district court's decision to compute Wade's child support obligation using his earning capacity.

B. Child Care Expenses

Wade next argues the district court erred by requiring him to pay for half of the child's daycare expenses in addition to his child support obligation.

"The purpose of the child support guidelines is to set an amount of support that will cover the normal and reasonable costs of supporting a child" except for medical support and postsecondary education expenses. *In re Marriage of Okland*, 699 N.W.2d 260, 268 (Iowa 2005). "Thus, it would be necessary to supplement the amount of support as provided under the guidelines . . . only to take into account unique expenses of a child not contemplated under the guidelines." *Id.* "Expenses for clothes, school supplies and recreation activities

are considered under the guidelines, and a separate support order covering such expenses is improper absent a finding that the guidelines amount would be unjust or inappropriate.” *In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 334 (Iowa Ct. App. 2005).

We find that daycare is one of the “normal and reasonable” costs of supporting a child. The district court justified a deviation from the guideline, requiring Wade to pay half of the daycare expenses because “both parties are working and each party derives some actual and significant benefit from daycare for the child.” We do not believe that the district court’s logic supports a finding that the guidelines would be inappropriate. In many cases both parties work and therefore derive some benefit from daycare. We conclude this is an expense contemplated by the child support guidelines as a normal cost of raising a child. Indeed, the guidelines provide a deduction for Tonya for childcare expenses. Therefore, the district court erred in ordering Wade to pay daycare costs in addition to his child support obligation.

Because we find Wade is not obligated to pay child care expenses in addition to his child support obligation, we determine the parties’ child support worksheets must be recalculated using the entire child care expense as a deduction in determining Tonya’s net monthly income pursuant to Iowa Court Rule 9.5(10).¹ The district court must then enter a child support order determining Wade’s child support obligation in accordance with the new child

¹ The child support worksheets submitted by the parties and relied upon by the district court in calculating Wade’s child support obligation split the child care expense deduction evenly between the parties.

support worksheets. We remand for submission of new child support worksheets and with directions to enter an order in accordance with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.