IN THE COURT OF APPEALS OF IOWA

No. 0-850 / 10-0580
Filed December 22, 2010

IN RE THE MARRIAGE OF CHARLES A. VOGL
AND BRENDA L. VOGL

Upon the Petition of
CHARLES A. VOGL,
Petitioner-Appellant,

And Concerning
BRENDA L. VOGL,
Respondent-Appellee.

Appeal from the Iowa District Court for Cass County, Richard H. Davidson, Judge.

Charles Vogl appeals the child support provision in the decree dissolving his marriage to Brenda Vogl. **AFFIRMED.**

Andrew J. Knuth of Knuth Law Office, Atlantic, for appellant.

Brenda Vogl, Atlantic, pro se.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

MANSFIELD, P.J.

Charles Vogl appeals the child support provision in the decree dissolving his marriage to Brenda Vogl. Charles claims the district court erred in calculating child support based upon his wages without regard to his Schedule F loss from farming. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

Charles and Brenda Vogl were married in September 2004, and had one child born in July 2005. In November 2008, the parties decided to separate and entered into mediation to settle several issues in anticipation of dissolution. Accordingly, on July 2, 2009, the parties executed a mediation agreement that resolved the parties' division of property and debt, child custody, visitation, insurance, taxes, and spousal support.

On July 16, 2009, Charles filed a petition for the dissolution of marriage. The petition was heard on January 14, 2010. At the time of the hearing, Brenda worked about thirty-two hours a week for Wal-Mart earning $7.65 per hour plus pay increases for hours worked on Sundays and holidays. Charles worked as a survey tech for Snyder & Associates in Atlantic earning about $31,377 per year. Charles also farmed on the side. From 2006 through 2008, the farming operation consistently reported a net loss; however, the net loss included substantial accelerated depreciation claimed under 26 U.S.C. § 179. Thus, in 2006, Charles's Schedule F showed a net loss of $24,600, including $4995 of section 179 depreciation. In 2007, the Schedule F showed a net loss of $2427, including $4700 of section 179 depreciation. In 2008, the Schedule F showed a net loss of $6692, including $17,200 of section 179 depreciation.

At the hearing, the district court received into evidence the tax returns and Brenda's pay stubs. It told the parties how it planned to calculate child support:

> What my inclination is to just completely ignore the farming side of it and go by [Charles's] employment outside the farming operation. Otherwise, we could spend probably half the morning or what's left of it taking testimony just on the farming operation expenses, and for me to dig into it, the schedules. So . . . I will probably just ignore the losses and go with the income.

Charles did not voice any objection to this procedure.

On March 8, 2010, the district court filed a decree of dissolution of marriage ordering Charles to pay child support of $271.05 per month. The record does not include any child support guideline worksheets submitted by the parties or other documentation to show how the court arrived at its child support figure.

Charles appeals. He claims the district court wrongly relied on his "earning capacity" rather than his actual earnings because it did not take into account his Schedule F loss in determining his income for child support purposes.

II. Standard of Review.

Our review is de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). We examine the entire record and decide anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005).

III. Child Support.

Charles argues the district court erred in setting his child support obligation because it disregarded his farm loss. In particular, Charles contends the district court failed to follow Iowa Court Rule 9.11(4), which 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.

We do not necessarily agree that rule 9.11(4) on "earning capacity" is implicated here, although we will credit Charles with making the broader argument that the district court deviated from the guidelines when it disregarded his farm income/loss. *See* Iowa Ct. R. 9.11 ("The court shall not vary from the amount of child support which would result from application of the guidelines without a written finding that the guidelines would be unjust or inappropriate . . . .").

However, we decline to accept Charles's appellate argument for two reasons. First, in determining a farmer's income for child support purposes, it is appropriate to disallow accelerated depreciation. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 51-52 (Iowa 1999); *In re Marriage of Gaer*, 476 N.W.2d 324, 329 (Iowa 1991). Section 179 is a tax benefit that, when utilized, may cause a tax return not to reflect the true economics of the farming operation.[1]

For Charles's last two tax years, it is apparent that if his section 179 depreciation were recalculated on a straight line basis, he would not have incurred any farm loss. Thus, on our de novo review, we can and do find that the district court's adjustment to Charles's income—i.e., its decision to disregard Charles's farm income/loss—is necessary to do justice between the parties under the special circumstances of this case. *See* Iowa Ct. R. 9.11(2); *see also*

[1] We also observe that many of the farm assets have been depreciated by the double declining balance method, another accelerated depreciation method.

Rhinehart, 704 N.W.2d at 680 (noting that because our review is de novo, we may make our own findings and conclusions).

In addition, at the hearing, the district court advised the parties that it planned to disregard Charles's farm income. Charles did not object at the time. The record does not include any child support guideline worksheet submitted by Charles after the hearing, so we cannot know whether he even asked the court later to consider his Schedule F loss. In short, from the record before us, we must conclude that Charles did not preserve his argument with regard to his farm loss. We note also that Charles's brief does not advise us how he preserved the farm loss issue for appellate review. *See* Iowa Ct. R. 6.903(2)(*g*)(1) (requiring the appellant to include in the argument section of his/her brief "[a] statement addressing how the issue was preserved for appellate review, with references to the places in the record where the issue was raised and decided").

Charles requests appellate attorney fees. Appellate attorney fees are discretionary. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We decline to award appellate attorney fees, considering, most importantly, the fact that Charles did not prevail on appeal. Court costs on appeal are taxed against Charles.

AFFIRMED.