

**IN THE COURT OF APPEALS OF IOWA**

No. 3-191 / 12-1392  
Filed May 15, 2013

**IN RE THE MARRIAGE OF TODD STRAWHACKER  
AND MELISSA STRAWHACKER**

**Upon the Petition of  
TODD STRAWHACKER,**  
Petitioner-Appellant,

**And Concerning  
MELISSA STRAWHACKER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,  
Judge.

Todd Strawhacker appeals from the child support and visitation provisions  
of the decree dissolving his marriage to Melissa Strawhacker. **AFFIRMED.**

Robert S. Gallagher and Peter G. Gierut of Gallagher, Millage &  
Gallagher, P.L.C., Bettendorf, for appellant.

Lynne C. Jasper, Bettendorf, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**BOWER, J.**

Todd Strawhacker appeals from the child support and visitation provisions of the decree dissolving his marriage to Melissa Strawhacker. He contends the district court erred in calculating his child support obligation. He also contends he should be granted additional visitation. Melissa requests an award of her appellate attorney fees.

Upon our de novo review, we find the district court properly imputed to Todd an income of \$25,000 per year in calculating his child support obligation. We also find the visitation schedule set forth in the decree affords the child maximum contact with both parents. Accordingly, we affirm the child support and visitation provisions of the decree. We award Melissa \$1000 in appellate attorney fees.

***I. Background Facts and Proceedings.***

Todd and Melissa began a relationship in 2005 and have one child who was born in October of 2007. They were married on December 21, 2008. Todd admits he physically abused Melissa during the marriage. He also admits to abusing drugs and alcohol.

The parties separated on August 2, 2010. After Todd threatened Melissa's boyfriend, she filed a petition for relief from domestic abuse on January 4, 2011. A domestic abuse protective order was entered by consent on February 9, 2011.

Todd owns a carpet cleaning business. He has been involved in the business for approximately fifteen years. He was a part owner until two years

ago, and is now the sole owner. The business has only one client, who employs Todd for eight to ten hours of work per month. He earned approximately \$8000 in 2010. In 2011, Todd also did contract work for an asphalt company and earned a total of \$5548.

Todd admits he is an alcoholic. His criminal record includes two convictions for operating while intoxicated and five convictions for possession of marijuana. Todd testified that at the time of trial, he had been sober for twenty-one months. He attends AA meetings every Monday. He also testified that he has not smoked marijuana since New Year's Eve of 2011.

Melissa worked full-time during the marriage and sometimes held a second job. At the time of the dissolution trial, Melissa worked as a manager-in-training at Pawn King, earning ten dollars per hour.

The evidence shows Melissa was the child's primary caretaker when she was not at work. Although Todd was not working during the day, Melissa often left the child with a babysitter. Todd was not an attentive parent and by his own admission spent between two to three hours per day—and as much as four or five hours per day—gambling online. Melissa testified that Todd failed to properly supervise their child when in Todd's care.

Todd filed a petition seeking to dissolve the marriage on January 12, 2011. A temporary order was filed on March 11, 2011, granting Melissa temporary physical care of the child. The court found Todd capable of working at least forty hours per week at minimum wage, which would equal an income of

\$280 per week. Based on this imputed income, the court ordered Todd to pay Melissa temporary child support in the amount of sixty dollars per week.

Trial was held on May 2, 2012. On May 16, 2012, the district court entered a decree dissolving the marriage. The parties agreed that Melissa should be granted physical care of the child. In determining Todd's child support obligation, the court imputed to him a gross annual income of \$34,270. Based on this amount, the court set his child support obligation at \$469.16 per month. Todd was granted visitation from 5 p.m. Friday until 5 p.m. Sunday on alternating weekends, from 7:30 a.m. until 4:30 p.m. on Saturdays if Melissa is working, every Wednesday from 4 p.m. until 8 p.m., alternating holidays, and one full week in the summer.

On May 25, 2012, Todd filed a motion to amend or enlarge the decree, asking that the amount of child support be recalculated. He also sought to modify the visitation provisions of the decree, asking the court to grant him visitation with the child every Saturday, not just those when Melissa is working.

The district court entered its ruling on Todd's motion to amend or enlarge on June 13, 2012. It modified the imputation of income to \$25,000 per year, an amount it found to be "slightly higher than [Melissa]'s non skilled employment." The adjustment resulted in a monthly child support obligation of \$409.81. The district court declined to modify the visitation provisions of the decree.

## **II. Scope and Standard of Review.**

We review dissolution of marriage proceedings de novo. *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007). We give weight to the district court's findings, especially where credibility determinations are involved. *Id.*

## **III. Child Support.**

Todd first contends the district court erred in calculating his child support obligation by imputing to him an income of \$25,000 when his actual earnings are approximately \$8000 per year.

The purpose of the child support guidelines is to provide for the child's best interests after considering each parent's proportional income. *In re Marriage of McDermott*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2013 WL 765316, \*10 (Iowa 2013). In order to apply these guidelines, the district court must determine the parents' current net monthly income. *McKee v. Dicus*, 785 N.W.2d 733, 739 (Iowa Ct. App. 2010). This determination is made based upon the most reliable evidence presented. *Id.*

Iowa Court Rule 9.11(4) states that 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." Here, the court found that not imputing wages to Todd "would cause a substantial hardship on Melissa and be a detriment to the child." We agree.

Where a parent's inability to earn a greater income is self-inflicted or voluntary, using that parent's earning capacity rather than actual income is appropriate. *In re Marriage of McKenzie*, 709 N.W.2d 528, 533 (Iowa 2006). We

examine the employment history, present earnings, and reasons for failing to work a regular work week when assessing whether to use the earning capacity of a parent. *In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 1997).

Although the court imputed minimum wage to Todd in calculating his temporary support obligation, the trial court found Todd was capable of earning more than minimum wage. Using the 2010 Occupational Employment Statistics, the court found the median income for those engaged in general maintenance work in Iowa is \$34,270 per year. The court imputed this income to Todd for child support purposes. In granting Todd's motion to amend or enlarge, the court lowered the amount of income imputed to \$25,000. The court found that Melissa has been able to find work at ten dollars per hour without having any particular skills, whereas Todd has some identifiable skills and should be able to earn at a higher level. It set the amount of Todd's imputed income at \$25,000, an amount only "slightly higher" than Melissa earns.

On appeal, Todd argues it is inequitable to impute to him an income higher than Melissa's when Melissa was the primary breadwinner during the marriage. He asks this court to modify the child support award, using the minimum wage figure used by the court in the temporary order.

Todd has worked in the carpet cleaning business for fifteen years. Although he only works eight to ten hours per month, there is nothing precluding Todd from working full-time other than the evidence that he is not actively seeking work. We find Todd's low earnings are self-inflicted. A person with fifteen years' experience in Todd's field is capable of earning \$25,000 per year.

The district court acted properly in imputing to Todd an annual income of \$25,000. We affirm the child support provisions of the dissolution decree.

**IV. Visitation.**

Todd also contends the district court erred in setting the visitation schedule. He argues the amount of visitation should be increased.

The court shall order child custody and visitation that “will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents” and “will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.” Iowa Code § 598.41(1)(a) (2011). As always, our governing consideration is the best interests of the child. *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa Ct. App. 1994).

Todd asks this court to modify the visitation schedule to allow him visitation every Saturday, not just those Saturdays when Melissa is scheduled to work. We find the visitation schedule configured by the court to be in the child’s best interests as it allows maximum contact with both parents. Accordingly, we affirm.

**V. Appellate Attorney Fees.**

Finally, Melissa requests an award of her appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other

party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999).

Melissa alleges her attorney spent a minimum of thirty hours preparing this appeal at a rate of \$225 per hour. She asks that she be awarded \$3500 of her appellate attorney fees. We award Melissa \$1000 in appellate attorney fees. Costs of the appeal are assessed to Todd.

**AFFIRMED.**