

IN THE COURT OF APPEALS OF IOWA

No. 3-304 / 12-1365

Filed June 26, 2013

**IN RE THE MARRIAGE OF DAWN D. BRAUNS
AND JON A. BRAUNS**

**Upon the Petition of
DAWN D. BRAUNS, n/k/a
DAWN D. ALBERTSON,**
Petitioner-Appellee,

**And Concerning
JON A. BRAUNS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Muscatine County, Marlita A. Greve, Judge.

Jon A. Brauns appeals the district court ruling modifying the final decree in his divorce from Dawn D. Albertson. **AFFIRMED.**

James W. Affeldt and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant.

Gregory A. Johnston, Muscatine, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Jon A. Brauns appeals the district court ruling modifying the final decree in his divorce from Dawn D. Albertson. Brauns argues the district court improperly calculated his income for purposes of child support by using an incorrect method to depreciate his business assets. Because we find the method used by the district court to be the most reliable, we affirm.

I. Background Facts and Proceedings

Jon A. Brauns and Dawn D. Albertson were divorced on July 26, 2002. The financial support of their two children was provided for in the original decree.

At the time of the decree the parties' combined assets were valued at less than \$50,000, and Brauns was ordered to pay \$507 per month in child support. Brauns was employed by Rogers Backhoe during the marriage, but has since purchased his own excavation business. Brauns pays the taxes for the business on a pass-through basis using the self-employment Schedule C. The book value of the business has increased substantially under Brauns's direction and is valued at more than \$500,000.

Brauns argues the nature of the business requires him to replace costly equipment on a regular basis and necessitates the retention and outlay of capital to ensure its continued success.

Albertson filed this action on July 1, 2010, asking to modify the child support and health insurance provisions of the decree. At trial, the district court increased Brauns's support obligation to \$1350.94 per month.¹ The health

¹ The support obligation decreases to \$1001.51 when only one child is eligible.

insurance provisions were modified changing the percentage Brauns is required to pay after a minimum threshold has been reached. The support obligation was based upon an average income of \$78,868. Brauns filed a motion to reconsider and argued the district court used an unreliable accounting method to calculate his income. The district court denied the motion.

II. Standard of Review

We review modification of dissolution decrees de novo. *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006).

III. Discussion

Brauns's argument centers upon the method by which certain assets of his business are depreciated when calculating his yearly income. As a self-employed individual operating a business with pass-through tax status, the depreciation of business assets impacts Brauns's income, at least on paper. Albertson's expert used a straight-line depreciation method which depreciates the assets equally each year of the asset's useful life. Brauns argues his expert, who used an accelerated depreciation schedule and calculated income according to Generally Accepted Accounting Principles (GAAP), presents a more reliable income estimate. Brauns's arguments are the straight-line method fails to account for the need to service significant debt, fails to account for unusually high inflation when replacing heavy equipment, and fails to adhere to generally

accepted accounting principles.² He also argues the district court should have excluded one year from a four-year average when determining his income.

A. Depreciation

Brauns argues the district court used the wrong method of depreciation in calculating his net income as a self-employed individual. The district court recognized that depreciation of business assets is not provided for in the child support guidelines, but relied upon existing precedent to support a straight-line depreciation method when calculating Brauns's income. Brauns argues an accelerated depreciation method is necessary due to the unique nature of his business.

Our supreme court has examined, at length, the various approaches to depreciation employed throughout the country and established that Iowa courts may deviate from the guidelines and consider the effect of depreciation when justice requires. *In re Marriage of Gaer*, 476 N.W.2d 324, 328 (Iowa 1991). More specifically, the court recognized some allowance may be necessary to ensure the continued success of a business and a straight-line depreciation method may be employed when necessary.³ *Id.* at 329. The guidelines exception announced in *Gaer* was reaffirmed by our supreme court in *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 52 (Iowa 1999), where the court once again rejected an accelerated depreciation allowance and used a straight-

² In its ruling, the district court noted that the parties were given seven additional days to provide briefing regarding whether GAAP or a straight-line depreciation method should have been utilized. The parties did not provide the district court with briefing on the issue during the seven day period.

³ The *Gaer* court further noted that depreciation is a book figure which has no impact on an individual's actual income. *Id.* at 328.

line depreciation method. The *Knickerbocker* court recognized that an accelerated depreciation method produces larger initial deductions during the early years of an asset's life, while straight-line depreciation deducts equal amounts over the years. *Knickerbocker*, 601 N.W.2d at 51, n.1. Whether depreciation is allowed at all depends upon all the available circumstances. *Gaer*, 476 N.W.2d at 328. The first consideration, however, is not the best interests of the business, but the best interests of the child. See *In re Marriage of McKenzie*, 709 N.W.2d 528, 533–34 (Iowa 2006).

We agree with the district court that the straight-line method of depreciation strikes the proper balance between planning for the continued success of the business and providing the proper level of support for the children. Brauns is in a capital intensive business which requires the regular replacement of expensive pieces of equipment, and the continued success of the business is in the best interests of the children. The straight-line depreciation method allows for the continuation of the business while providing regular support for the children and at the same time minimizes any risk that the financial standing of the company could be manipulated to deny the children the support they deserve. Our supreme court has expressed a preference for the straight-line method, and we find it is appropriate here. See *Knickerbocker* 601 N.W.2d at 52 (approving of the straight-line method); *Gaer*, 476 N.W.2d at 329 (utilizing a straight-line method).

B. Average Income

Brauns claims the district court erred in using a four-year average when computing his child support obligation. The district court used the years 2008–2011 when calculating net income. Due to flooding and a number of government contracts, Brauns had a better than normal year in 2008, which he argues skewed his average income. He asks that 2008 be excluded from his income calculation.

When determining net income, we are to use the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). The difference between using and excluding the 2008 earnings in calculating Brauns's income is important. Excluding 2008, however, leaves us with only two full years of income plus the annualized figure for a partial year's earnings in 2011, although this matter was tried in 2012. Though we recognize that 2008 was a better year than most, we find the district court properly used the 2008 income figures in calculating Jon's child support obligation.

AFFIRMED.