IN THE COURT OF APPEALS OF IOWA

No. 6-354 / 05-1832
Filed June 14, 2006

IN RE THE MARRIAGE OF SCOTT L. RICKLEFS AND CHERYL A. RICKLEFS

Upon the Petition of
SCOTT L. RICKLEFS,
Petitioner-Appellee,

And Concerning
CHERYL A. RICKLEFS,
Respondent-Appellant.

Appeal from the Iowa District Court for Pocahontas County, Joel E. Swanson, Judge.

Cheryl Ricklefs appeals from the district court order modifying the child support provisions of a previous decree. **AFFIRMED.**

R. Thomas Price, Fort Dodge, and Mark McCormick of Belin, Lamson, McCormick, Zumbach & Flynn, P.C., Des Moines, for appellant.

Dan T. McGrevey, Fort Dodge, for appellee.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

EISENHAUER, J.

Cheryl Ricklefs appeals from the district court order modifying the child support provisions of the decree dissolving her marriage to Scott Ricklefs. She contends the court erred in overruling her motions for recusal and new trial. She also contends it erred in determining the amount by which her child support obligation should be increased, and in failing to modify her medical insurance obligation. She finally contends the court erred in granting Scott attorney fees. Scott requests an award of his appellate attorney fees.

We review the record before us de novo. *Dale v. Pearson,* 555 N.W.2d 243, 245 (Iowa Ct. App. 1996). De novo review requires us to review the facts as well as the law and adjudicate rights anew on those propositions properly presented, provided the issue has been raised and error, if any, preserved in the course of the trial court's proceedings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977). We give weight to the findings of the trial court although they are not binding. *Id.*

Cheryl and Scott's marriage was dissolved in 1995. They were granted joint custody of their three minor children, with physical care granted to Scott and child support paid by Cheryl. The decree was modified in 1998, setting Cheryl's child support obligation for one child at $393.98 per month. Cheryl was also required to pay one-half of the medical insurance premiums relating to the children.

On November 30, 2004, Scott petitioned for modification of child support, alleging that application of the child support guidelines to Cheryl's current income would result in a variance of more than ten percent from the current child

support. Cheryl acknowledged her support should be increased from $393.98 to $483.22 per month. In her pre-trial statement filed the day before trial, Cheryl for the first time identified as an issue the requirement that she pay one-half of the uninsured medical premium for the child. Both parties requested an award of attorney fees.

The district court granted Scott's petition to modify, increasing the amount of Cheryl's support obligation to $612.00 per month. The court also awarded Scott $1000.00 in attorney fees. Cheryl filed a motion for new trial and requested Judge Swanson recuse himself from hearing the motion for new trial. The court refused to recuse and overruled the motion for new trial and Cheryl appeals.

We conclude the court did not err in denying Cheryl's motion for recusal. It is well established we will review a judge's decision to recuse him or herself only for an abuse of discretion. *In re Marriage of Clinton*, 579 N.W.2d 835, 837 (Iowa Ct. App. 1998). In order to show an abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Edson v. Chambers*, 519 N.W.2d 832, 834 (Iowa Ct. App. 1994). Canon 3(C)(1)(*a*) of the Iowa Code of Judicial Conduct provides in part that a judge should recuse himself or herself from a proceeding in which the judge's impartiality might be reasonably questioned due to bias or prejudice.

Cheryl bases her assertion that the judge did not act impartially on a conversation that allegedly took place off the record. However, she did not make a record of the conversation by seeking a bill of exceptions as provided in Iowa Rule of Civil Procedure 1.1001. Scott characterizes the statements as directed

at both parties. The trial court in its ruling states Cheryl's characterization of the off-the-record discussion is "self-serving, inaccurate, inflammatory, and inappropriate." What exactly was said is not in the record. Even if we accept as accurate the statements referred to in Cheryl's brief, we conclude Cheryl has failed to show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. The alleged statements were directed to both attorneys and nothing in the subsequent hearing or order of modification indicates a duty for the judge to recuse himself. We likewise conclude the court did not err in denying Cheryl's motion for new trial.

Cheryl failed to preserve error on the issue of modification of her medical insurance obligation. Even though the issue was mentioned in the evidence, Cheryl did not request modification in any pleading and she filed no counterclaim. Therefore, the district court could not grant such relief. *See Johnson v. Johnson*, 188 N.W.2d 288, 291 (Iowa 1971) (holding relief may not be granted where nothing in prayer for relief or facts asserted in pleadings apprises opposing party of what relief is asked for).

Finally, we address Cheryl's contention that the district court erred in determining the amount by which her child support obligation should be increased. She argues the court erred in determining Scott's current income for child support purposes is $29,266.82. She claims the court wrongly included among his deductions the depreciation of his farming equipment.

Here, the district court determined Scott's net income for child support purposes by allowing him to deduct a straight-line depreciation of his farming equipment and by averaging his income over a four-year period. We conclude

these actions were proper given the nature of Scott's occupation. *See In re Marriage of Knickerbocker*, 601 N.W.2d 48, 52 (Iowa 1999) (using a straight-line depreciation method to determine net income because "reasonable depreciation on farm machinery and other assets related to the farm business is an expense reasonably necessary to maintain that business."); *In re Marriage of Cossel,* 487 N.W.2d 679, 683 (Iowa Ct. App. 1992) (farmer's income calculated by averaging income over three-year period); *In re Marriage of Hoag,* 380 N.W.2d 8, 10 (Iowa Ct. App. 1985) (farmer's income calculated by averaging income over five-year period).

Finally, Cheryl contends the court erred in awarding Scott $1000.00 in trial attorney fees. An award of attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Wessels,* 542 N.W.2d 486, 491 (Iowa 1995). Awards of attorney fees must be fair and reasonable and based on the parties' respective abilities to pay. *In re Marriage of Hansen,* 514 N.W.2d 109, 112 (Iowa Ct. App. 1994). Upon review of the record, we affirm the district court's award of attorney fees. We decline to award Scott his appellate attorney fees.

AFFIRMED.