IN THE COURT OF APPEALS OF IOWA

No. 7-430 / 06-1353
Filed August 22, 2007

Upon the Petition of
DEANGELO DELONN SEAY,
Petitioner-Appellant,

And Concerning
ANDREA LYNETTE THOMAS,
Respondent-Appellee.

Appeal from the Iowa District Court for Lee (South) County, Cynthia H. Danielson, Judge.

DeAngelo Seay appeals from the child support order in the district court's decree. **AFFIRMED.**

Curtis Dial, Keokuk, for appellant.

James F. Dennis, Keokuk, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

DeAngelo Seay and Andrea Thomas have three children together: DeAirra (age eleven), DeVinity (age nine), and DeAhjae (age six). DeAngelo and Andrea have never been married. DeAngelo also has three children with two different mothers, and Andrea also has one child with another father. An order of protection was entered between the parties in August 2005.

DeAngelo subsequently filed a petition to establish custody, visitation, and support on October 4, 2005. The district court established that DeAngelo's gross monthly income was $1593.26 and Andrea's monthly gross income was $1304.00. At the time of trial, DeAngelo's arrearage on his child support obligation to Andrea was $4078.42. The district court ordered that the parties would have joint legal custody and joint physical care and also established a physical care schedule. Finally, the district court ordered DeAngelo to pay $331 per month for child support with a twenty-five-percent credit for extraordinary visitation, resulting in a payment of $248 per month. In its order the district court stated that the

> award of joint physical care does not, however, translate into a 50-50 division of the children's time. Supreme Court Rule 9.14 provides for an offset calculation only in the event physical care is equally shared. DeAngelo has not and will not, pursuant to this order, have physical care of the children 50% of the time. . . . Therefore, DeAngelo's child support obligation will be established pursuant to Child Support Recovery Unit's Exhibit 7, with an additional 25% credit given for extraordinary visitation in excess of 166 days.

On appeal, DeAngelo argues the court erred in not offsetting the support obligations of the parties to determine child support. Andrea cross-appealed, however, her cross-appeal was dismissed as untimely filed.

II. Standard of Review.

Our standard of review for cases brought in equity is de novo. Iowa R. App. P. 6.4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999). In doing so, we give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but we are not bound by them. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 51 (Iowa 1999).

III. Discussion.

DeAngelo argues that his child support obligation should have been calculated using the offset method. DeAngelo contends that under Iowa Court Rule 9.14 the district court must use the offset method to calculate child support when it has awarded the parties joint physical care. Rule 9.14 states,

> In cases of court-ordered joint (*equally shared*) physical care, child support shall be calculated in the following manner: compute the child support required by these guidelines for each party assuming the other is the custodial parent; offset the two amounts as a method of payment; and the net difference shall be paid by the party with the higher child support obligation. . . .

(Emphasis added.) Andrea argues that rule 9.14 does not apply because the physical care of the children is not equally shared by each parent under the schedule established by the district court. DeAngelo further argues that our supreme court's decisions have consistently approved the use of the offset

method where the parties are awarded joint physical care. He cites *In re Marriage of Fox*, 559 N.W.2d 26 (Iowa 1997), in support of his argument. However, this case is inapposite. While this case generally approves of the use of the offset method, the supreme court stated that "[o]ur cases have consistently conformed to the statutory presumption favoring the guidelines unless their application would lead to injustice or hardship." *Fox*, 559 N.W.2d at 28. The supreme court also stated,

> We reject James' contention that his "one-third" share of parenting entitles him to a corresponding reduction in his child support obligation. It would make no difference whether the split were 60/40, 70/30, or 80/20. We think it simply unwise and counterproductive to use such artificial formulas to chip away at the uniformity and fairness sought to be achieved by the guidelines.

Id. at 29. Our reading of this case is that the supreme court has stated clearly that district courts should not deviate from the guidelines and rules when calculating child support. *Id.* Moreover, the district court should not use the offset method unless physical care time is split fifty-fifty between the parents. *Id.* Furthermore, our supreme court recently discussed joint physical care in its opinion in *In re Marriage of Hynick*, 727 N.W.2d 575 (Iowa 2007). It stated, "Joint physical care anticipates that parents will have equal, or roughly equal, residential time with the child." *Hynick*, 727 N.W.2d at 579. *Hynick* provides further support for limiting the application of rule 9.14 to situations where physical care time is split fifty-fifty between the parents. *Id.*

We must next determine whether each parent has the children fifty percent of the time. The schedule established by the district court mandates that DeAngelo will have physical care of the children on alternating weekends from

Friday at 5:00 p.m. to Sunday at 5:00 p.m., also every Tuesday night from 6:00 p.m. until the beginning of school on Wednesday, and every Thursday night from 6:00 p.m. until the beginning of school on Friday. Additionally, each parent will have two one-week periods of continuous visitation with the children during their summer vacation from school, and the parents will alternate holidays. According to Iowa Court Rule 9.9, the term "days" is defined as overnight visits spent caring for the child.

Consequently, for forty-eight weeks of the year, DeAngelo has the children for an average of three days a week and Andrea has the children for an average of four days a week. DeAngelo then has the children for 144 days of the regular schedule plus fourteen days for vacation during the summer for a total of 158 days. Andrea has the children for 192 days of the regular schedule plus fourteen days for vacation during the summer for a total of 206 days. DeAngelo has the children approximately forty-three percent of the time, and Andrea has the children approximately fifty-six percent of the time. The physical care ratio between these two parents is not the same as the physical care ratio required for application of rule 9.14. Therefore, we affirm the district court's decision to calculate child support using the traditional child support guidelines and granting DeAngelo an extraordinary visitation credit instead of using the offset method.

Additionally, Andrea argues in her brief: (1) that DeAngelo was awarded an extraordinary visitation credit in excess of what is required under Iowa Court Rule 9.9 and (2) that the case should be remanded to the trial court to recalculate the correct amount of child support because the trial court used the incorrect number of dependents awarded to DeAngelo for income tax purposes in

calculating his child support obligation. We decline to address these issues because Andrea failed to timely file a cross-appeal. *O.K. Tire & Rubber Co. v. Oswald*, 166 N.W.2d 749, 750 (Iowa 1969) (finding one who has not appealed may not have a more favorable result in the appellate court than was granted in the district court unless a timely cross-appeal has been perfected).

IV. Appellate Attorney Fees.

Finally, Andrea seeks appellate attorney fees from DeAngelo; however, she failed to argue the merits of her request. Iowa Rule of Appellate Procedure 6.14(1)(*c*) states: "Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue." Accordingly, we consider the issue waived.

AFFIRMED.