IN THE COURT OF APPEALS OF IOWA

No. 8-126 / 07-1084
Filed February 27, 2008

IN RE THE MARRIAGE OF JEFFREY B. MYLAN AND HEATHER MCKAY MYLAN

Upon the Petition of
JEFFREY B. MYLAN,
Petitioner-Appellee,

And Concerning
HEATHER MCKAY MYLAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, William H. Joy (hearing), and D.J. Stovall (final judgment), Judges.

Appellant appeals a district court order reducing her ex-husband's monthly child support obligation. **AFFIRMED.**

Heather Mylan Mains, West Des Moines, appellant pro se.

Thomas J. Miller, Attorney General, Christina Hansen, Assistant Attorney General (Child Support Recovery Unit), and John P. Sarcone, County Attorney, for appellee State.

Jeffrey Mylan, Adel, appellee pro se.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Heather Mylan Mains appeals a district court order reducing her ex-husband's monthly child support obligation.

I. Background Facts and Proceedings

Jeffrey and Heather Mylan divorced in 1997. At that time, Jeffrey's net monthly income was $1947.04 and Heather's net monthly income was $1946.19. The district court ordered Jeffrey to pay Heather $584.11 in monthly child support for the parties' two minor children.

Jeffrey became delinquent on his payments and, in 2002, the Child Support Recovery Unit (CSRU) began efforts to collect the delinquency through mandatory income withholding. In 2003, a child support guidelines worksheet disclosed that Jeffrey had net monthly income of $3179 and Heather had net monthly income of $2567. Based on these income figures, CSRU increased Jeffrey's child support obligation to $890 per month for the two children. The district court approved the administrative order.

Three years later, Jeffrey sought an administrative reduction of his child support obligation. CSRU found Jeffrey's net monthly income was now $2069.64 and Heather's net monthly income was $3329.36. This represented a decrease of $1110 in Jeffrey's net monthly income and an increase of $762 in Heather's net monthly income. Based on these income figures, CSRU determined that Jeffrey's child-support obligation for two children should be reduced from $890 per month to $584 per month. Heather appealed this determination. Following a hearing, the district court approved the reduced figure. Heather filed a notice of appeal.

II. Analysis

Heather asserts Jeffrey's child-support obligation should not have been reduced because he voluntarily quit his job knowing his new job would pay less. We do not have the benefit of a final brief from Jeffrey but we do have the record of administrative and district court proceedings. Our review of that record is de novo. *State ex rel. Weber v. Deniston*, 498 N.W.2d 689, 690 (Iowa 1993).

On our de novo review, we are not faced with determining the accuracy of CSRU's child-support calculation based on the income figures that were used; Heather conceded the calculation was accurate. Instead, we are faced with deciding whether income should have been imputed to Jeffrey.

> One of the factors we consider in determining if we will use a parent's earning capacity, rather than a parent's actual earnings, in order to meet the needs of the children and do justice between the parties is whether the parent's inability to earn a greater income is self-inflicted or voluntary.

In re Marriage of McKenzie, 709 N.W.2d 528, 533 (Iowa 2006). We may also consider the combined income of a payor and his or her new spouse "to determine whether a strict application of the guidelines would result in a substantial injustice." *Id.* The foremost consideration, though, is "what is in the best interests of" the children. *Id.* at 534.

Turning to the first factor, there is no question Jeffrey voluntarily reduced his income, but his reasons for doing so differed significantly from the reasons that were found unpersuasive in *McKenzie*. There, the noncustodial parent moved to another state after twenty-two years with the same Iowa employer. *Id.* at 532. He did so to be with his girlfriend. *Id.* When he moved, he "did not have another job lined up." *Id.* at 533. Although he searched for a job with income

that was comparable to what he had earned in Iowa, he ultimately accepted employment that resulted in substantially lower income. *Id.* Here, in contrast, Jeffrey took another position in the same geographical vicinity. He did so because his previous employment required him "to work approximately 55 to 60 hours a week and it was commission sales only, with no base pay." He also had "no weekends off" with his previous job, while his new position was limited to "40-hours a week and weekends off." Because the facts here are sufficiently distinguishable from the facts in *McKenzie*, we believe Jeffrey's voluntary reduction of income did not foreclose a reduction of his child support obligation.

In reaching this conclusion, we have considered the general principle that a person should not have to work overtime to pay child support. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). While the record does not suggest Jeffrey worked overtime "solely to meet his support obligation," *id.*, there is evidence that he had difficulty meeting that obligation. We have also considered the fact that Heather's income increased by $762 per month. Barring other changes in the parties' financial circumstances, this fact would have warranted an adjustment of Jeffrey's child support obligation even if Jeffrey's income had remained the same.

We turn to Heather's argument that Jeffrey benefitted from the income of his new spouse. Heather presented no evidence concerning the new spouse's income or how the couple divided expenses. Therefore, we have no record on which to assess this factor.

Our final consideration is the best interests of the children. When Jeffrey had his higher-paying job, the children spent every Wednesday and Thursday

with him because those were his days off. While Heather characterized that schedule as "very consistent," she also testified that the children were in school on those days, leaving only the afternoons and evenings free to spend with their father. Jeffrey testified his new schedule allowed him "more weekends" with the children. Heather disputed this testimony, but she also stated that, if the children were spending less time with their father, it was because they were "very busy." To the extent Jeffrey's new position allowed him to spend weekends with his children, we conclude his change in employment inured to their benefit.

Based on these factors, we affirm the district court's decision to approve CSRU's administrative reduction of Jeffrey's child support.

AFFIRMED.