

IN THE COURT OF APPEALS OF IOWA

No. 1-719 / 11-0446
Filed October 19, 2011

**IN RE THE MARRIAGE OF MARY ELIZABETH LANGE
AND CALVIN J. LANGE**

**Upon the Petition of
MARY ELIZABETH LANGE,
n/k/a MARY ELIZABETH FOWLER,**
Petitioner-Appellee,

**And Concerning
CALVIN J. LANGE,**
Respondent-Appellant.

Appeal from the Iowa District Court for Humboldt County, Thomas J. Bice,
Judge.

A father appeals the district court's order modifying the parties' dissolution
decree on the issues of child support, visitation, and tax exemptions. **AFFIRMED
AS MODIFIED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Dani L. Eisentrager of Eisentrager Law Office, Eagle Grove, for appellee.

Considered by Vaitheswaran, P.J., Tabor, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Calvin Lange and Mary Lange, now known as Mary Fowler, were previously married. They had three minor children, T.L., born in 1999, J.L., born in 2000, and S.L., born in 2001. A dissolution decree was entered for the parties on February 1, 2005, which incorporated the parties' stipulation. Pursuant to the stipulation, Mary had physical care of the children. Calvin had visitation on alternating weekends, Wednesday evenings, alternating holidays, and for five weeks in the summer. He was ordered to pay child support of \$548 per month for the three children. Calvin was awarded the tax exemption for J.L., Mary had the tax exemption for S.L., and the parties alternated the exemption for T.L.

On March 18, 2009, Calvin filed a petition for modification asking that the children be placed in his physical care. He alleged Mary's then-boyfriend, Christopher Fowler (Chris), had physically and sexually abused the children. Mary and Chris were married in April 2009, and he moved into the home.

The modification hearing was held on May 19, 2010. At that time Calvin was thirty-six years old. He lived in a home owned by his live-in girlfriend, Rhonda Meyer, in Humboldt, Iowa. Calvin was employed as an assembler at Chantland's, where he earned \$26,595 in 2009. Mary was also thirty-six years old at the time of the modification hearing. She lived in Jewell, Iowa, with her husband, Chris. Mary operated a daycare out of her home, and earned about \$15,000 per year.

The district court denied the request to modify the dissolution decree. Calvin appealed the district court's decision. On December 22, 2010, the Iowa Court of Appeals reversed the district court's decision and remanded for further proceedings. See *In re Marriage of Lange*, No. 10-0905 (Iowa Ct. App. Dec. 22, 2010). The court determined the children should be placed in the physical care of Calvin because Mary "ha[d] not put their best interests first." *Id.* The court concluded, "This modification necessitates a remand for the district court to make the attendant orders such as child support and visitation." *Id.*

By a court order, Calvin's child support obligation terminated on December 31, 2010. A hearing on remand was held on February 8, 2011. Mary testified that in 2010 she earned \$11,459 from her daycare. Mary asserted that if she had extraordinary visitation her child support obligation would be \$82.50 per month, and if she did not receive extraordinary visitation her child support obligation would be \$110 per month. Calvin testified that he earned more than \$30,000 in 2010. His child support worksheet was based on the parties' incomes in 2009, and he requested that Mary be ordered to pay \$218 per month.

The district court entered an order on February 15, 2011, finding "that a compromise figure for child support would be appropriate and therefore order[ed] that the sum of \$150.00 per month shall be paid by Mary for child support," beginning March 1, 2011.¹ The court determined Calvin would have the right to claim two children for tax exemptions in 2011, and Mary would claim one of the children. This would be reversed in the next year, so that Mary would be able to

¹ The amount of child support would be reduced to \$100 per month for two children, and fifty dollars per month for one child.

claim two of the children, and Calvin one, and alternating in this manner in subsequent years.² Mary was granted visitation on alternating weekends, Wednesday evenings, alternating holidays, and five weeks in the summer. The court determined Mary would not be required to return items that the children had requested to take when they moved to Calvin's house.

Calvin filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). The court ordered Mary to contribute to the children's uncovered medical expenses. The court amended the visitation schedule to give Calvin "one full week in the summer when he can have the children without visitation or contact by [Mary]." The court denied Calvin's requests on the issues of retroactive child support, tax exemptions, holiday visitation, and transfer of the children's items. Calvin appealed the decision of the district court.

II. Standard of Review

In equity cases our review is de novo. Iowa R. App P. 6.907. We examine the entire record and adjudicate the parties' rights anew on the issues properly presented on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999). In equity cases, we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App P. 6.904(3)(g).

² When only two children were eligible for support, then each parent would be able to claim one child as a tax exemption. When only one child was left for tax exemption purposes, the parties would alternate years of claiming that child, with Calvin having the right to claim the child in the first year.

III. Child Support

A. Calvin contends Mary's child support obligation should be increased to \$218 per month. He claims the most reliable evidence of her income was her 2009 tax return, which showed her income was \$15,178. He states that although she brought in an income tax return for 2010 showing her income for that year was \$11,459, it had not actually been filed. Calvin also claims Mary's net income does not represent her actual income because she has taken accelerated depreciation and has made questionable deductions for tax purposes.

Courts seek to ascertain the current monthly income of parents from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). Mary's 2010 tax return shows that it was prepared by a certified public accountant (CPA). Mary testified that although she had not filed the tax return yet at the time of the hearing in February 2011, she planned to file it. The record does not show Mary was earning \$15,000 per year at the time of the remand hearing. We agree with the district court that the evidence does not support Calvin's request to require Mary to pay \$218 per month in child support.

Furthermore, the district court did not use Mary's income as represented on the 2010 tax return. Instead of ordering her to pay \$110 per month as she requested, the court ordered her to pay \$150 per month in child support. We believe the court's adjustment was based on Mary's use of accelerated depreciation and questionable deductions to reduce her net income. We affirm the district court's order as to the amount of child support.

B. Calvin also appeals the timing of Mary's child support obligation. He points out he received physical care of the children effective December 22, 2010, the date of the Iowa Court of Appeals ruling, and was given financial responsibility for the children on the same date. He claims "[f]rom that date forward until the remand ruling, Calvin has been solely responsible for the financial well-being of these children, without any contribution from Mary." He asks to have Mary's child support obligation begin January 1, 2011. See Iowa Code § 598.21C(5) (2009).

As noted above, the district court ordered Mary's child support obligation to begin March 1, 2011. An order filed January 11, 2011, ruled Calvin's support obligation would cease as of December 31, 2010.³ Therefore, there was no effective child support obligation for the children in place between December 31, 2010, and March 1, 2011. We determine Mary's child support obligation should begin January 1, 2011, and modify the remand order accordingly.

IV. Tax Exemptions

The district court ordered that for the tax year 2011 Calvin would claim two of the children as dependents for tax purposes, and Mary would claim one. The next year, in 2012, Mary would claim two of the children as dependents for tax purposes, and Calvin would only claim one. This scheme would continue, with the parties alternating the ability to claim two of the children as dependents. When there were only two children remaining who were eligible for support, each parent would be able to claim one child as a dependent for tax purposes. When

³ Apparently, Calvin had already paid some amount of child support for January 2011. In the remand order of February 15, 2011, the district court ordered Mary to repay Calvin \$306.45 for past overpayment of child support.

only one child was left for tax exemption purposes, the parties would alternate years of claiming the child, with Calvin having the right to claim the child in the first year.

Calvin contends he should be awarded all three children as exemptions for federal and State income tax purposes. A court has authority to award the tax exemption in order to achieve an equitable resolution of the economic issues in a case. *In re Marriage of Okland*, 699 N.W.2d 260, 269 (Iowa 2005). Generally, the parent with physical care of the child is entitled to claim the child as a tax exemption. *Id.* Mary is self-employed and she pays very little or no income taxes. The tax exemptions are much more valuable to Calvin. Additionally, Calvin is now the parent with physical care of the children, and under the general rule he would be entitled to claim the children as tax exemptions.

We determine the most equitable resolution is to modify the remand order to provide that Calvin should be able to declare two of the children as dependents for tax purposes, and Mary should be able to claim one of the children. When only two of the children are eligible, Calvin may declare one of the children, and the parties will alternate years for declaring the other child. When only one child is eligible to be declared as a dependent for tax purposes, the tax exemption is awarded to Calvin.

V. Personal Property

Calvin asserts that when he assumed physical care of the children, he received very few clothes for the children and no toys or games. At the remand hearing he submitted a list of items that were at Mary's residence that the

children wanted to bring to his house. These included clothing, electronic games, toys, and chairs. Mary testified these were items she purchased for the children, presumably since the dissolution in 2005. The district court ordered Mary would not be required to send these items to Calvin's house. We agree that while Mary may voluntarily agree the children may take these items with them, she should not be required to send these items to Calvin's house.

VI. Visitation

Under the remand order holiday visitation is from 9:00 a.m. until 8:00 p.m. unless otherwise specified. Calvin testified that when Mary had the children for visitation and there was school the next day, the children were not getting their homework done. He asked that if there was holiday visitation preceding a school day that Mary be required to return the children at 6:00 p.m. Rhonda also testified that the children were not getting their homework done when they were with Mary.

Our primary consideration in determining visitation rights is the best interest of the children. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa Ct. App. 1992). The evidence supports a finding that until shortly before the remand hearing the children were not getting their homework done when Mary had visitation and there was school the next day. Calvin's brief states, "Calvin seeks only, during the school term, to change the termination time of holiday visitation (if preceding a school day) from 8:00 P.M. to 6:00 P.M." We conclude the decree should be modified to provide that Mary must return the children at 6:00 p.m. when she is exercising holiday visitation on a day preceding a school day.

VII. Conclusion

We affirm the decision of the district court, except as specifically modified in this opinion. We have modified the remand order to provide that Mary's child support obligation began effective January 1, 2011. We have also modified the district court's award of tax exemptions. In addition, we have modified the visitation schedule to provide that when Mary has holiday visitation on a day preceding a school day she must return the children by 6:00 p.m. Costs of this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.