

STATE OF MICHIGAN  
COURT OF APPEALS

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ELIZABETH RENEE THORNBURG, a/k/a  
ELIZABETH RENEE BOVO,

UNPUBLISHED  
June 17, 2004

Plaintiff-Appellant,

v

CHRISTOPHER JOHN VOGT,

No. 245408  
Van Buren Circuit Court  
LC No. 95-004190-DP

Defendant-Appellee.

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Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the child support order based on imputed income. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In this paternity action, plaintiff was ordered to pay child support based on imputed income when she left the state and became unemployed. When she returned to Michigan, she moved to modify the support order, stating that she only worked part time, and was anticipating being off work soon due to the impending delivery of another child. The Friend of the Court recommended that income no longer be imputed, but the circuit court ordered support based on imputed income of \$280 per week.

Application of the Michigan Child Support Formula Manual is mandatory unless an application would be unjust or inappropriate. MCL 552.605(2). If a court deviates from the manual it must indicate in writing or state on the record the child support amount determined by the formula, how the support order deviates from the formula, the value of other support or property awarded instead of payment of the formula amount, and the reasons why application of the formula would be unjust or inappropriate. *Id.*<sup>1</sup>

Any imputation of income must be based on an actual ability and likelihood of earning the imputed income. *Ghidotti v Barber*, 459 Mich 189, 199; 586 NW2d 883 (1998). Among other equitable factors, the manual requires an evaluation of prior employment experience,

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<sup>1</sup> Plaintiff does not argue that imputation is barred because the reduction in income occurred prior to the initial modification.

education level, physical and mental disabilities, the presence of children in the home and its impact on earnings, availability of employment in the local area, prevailing wage rates, special skills, and whether there is any evidence that the party in question is able to earn the imputed income. *Id.*

The trial court failed to consider all the required factors before it ordered the imputation of income. A review of the limited evidence shows that plaintiff had little employment experience, she did not have a high school diploma, and she had a new baby in her home. There was no evidence presented regarding the availability of employment in the local area or the prevailing wage rates. Plaintiff did not have special skills and training, and there was no evidence that she would be able to earn the imputed income. On remand, the trial court is to make the findings required by the Michigan Child Support Formula Manual before it orders the imputation of income.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Brian K. Zahra  
/s/ Christopher M. Murray