

**IN THE COURT OF APPEALS OF IOWA**

No. 3-135 / 12-0992

Filed April 24, 2013

**IN RE THE MARRIAGE OF JESSICA RAE  
CHESLEY AND JEREMY DAVID CHESLEY**

**Upon the Petition of  
JESSICA RAE CHESLEY,**  
Petitioner-Appellee,

**And Concerning  
JEREMY DAVID CHESLEY,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Peter A. Keller,  
Judge.

Jeremy Chesley appeals the denial of his application to modify child  
support. **REVERSED AND REMANDED.**

Jeremy David Chesley, Largo, Florida, pro se appellant.

Jessica Rae Chesley, Des Moines, pro se appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**TABOR, J.**

Jeremy Chesley seeks to modify his child support payments. He was required to pay \$585 per month for his two daughters under the dissolution decree issued in June 2010. The district court's modification order calculated Jeremy's obligations at \$495 per month plus \$68.75 in cash medical payments, which the court found did not demonstrate a substantial change in circumstances. Jeremy now argues the court miscalculated his support and that both parties' changed financial circumstances warrant modification.

Because the district court included four dependent exemptions when the parties have only two mutual children, we remand for the court to amend its calculations. In addition, because the original decree did not require Jeremy to provide cash medical support, without more evidence, the \$68.75 payments should not be included in the modification order. After making these adjustments on remand, the district court should consider whether Jeremy's additional arguments justify further modification.

***I. Background Facts and Proceedings***

Jeremy and Jessica Chesley met in 1996. Jeremy had a son from a previous marriage who is now seventeen years old. The parties married in May 1999. Jeremy and Jessica are the parents of two daughters, who are now eleven and seven years old. The family lived in Tampa Bay, Florida until 2007, when they moved to Des Moines. The parties separated in August 2009. Jessica moved to an apartment with both daughters while Jeremy and his son remained in the family home.

Jeremy originally sold real estate and had a few lucrative years. But when the market slowed, the home went into foreclosure, forcing Jeremy and his son to move back to Florida with Jeremy's mother, who runs her own medical billing business. He worked for his mother's company an average of twenty-five to forty hours per week at a rate of ten dollars an hour.

Jessica filed a petition for dissolution on December 20, 2009. On June 9, 2010, the district court entered a stipulated decree dissolving the marriage.<sup>1</sup> The court awarded joint custody and placed physical care of both girls with Jessica. Jeremy had visitation, which included trips to Des Moines plus five weeks in the summer, with sole responsibility for transportation costs and travel arrangements.

The court found Jessica earned \$32,500 annually and the parties stipulated that Jeremy's annual income was \$27,500. The decree incorporated the guideline worksheet to require Jeremy pay \$585 per month in child support. The decree required Jessica to provide medical insurance for the family and pay the first \$250 per child for medical bills not covered by insurance, then the parties were to split the costs, with Jeremy paying forty-five percent and Jessica paying fifty-five percent.<sup>2</sup>

On August 11, 2011, Jeremy applied to modify his child support payments. He requested the \$585 monthly payments be reduced because his income

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<sup>1</sup> The decree largely mirrored the April 6, 2010 stipulated temporary order.

<sup>2</sup> The order included debt and asset divisions as well. The court ordered each party to pay the debt from credit cards in their respective names, and split the Best Buy credit card balance between them. Jessica would continue using and making payments on the 2005 GMC Envoy and Jeremy would use and make payments on the 2005 Mustang. Both parties acknowledged their home was in foreclosure and they would each have responsibility toward any resulting debt.

decreased, while the birth of his son since the dissolution decree increased his expenses. Jeremy alleged Jessica was earning more income and her expenses decreased, and he criticized the original child support calculation as not adhering to the guidelines established by the Iowa Supreme Court.

During a March 15, 2012 modification hearing, the district court heard testimony from both parties, as well as Jeremy's current wife Debra. Jeremy testified his earlier income stipulation exaggerated his salary, and that he currently earns twelve dollars an hour for \$24,960 annually. Jessica testified a portion of Jeremy's pay from his mother is in the form of cash for which he is not accounting. She also testified she earns fifteen dollars an hour working full-time at an engineering firm. Both parties submitted child support worksheets, tax documents, and other evidence verifying their financial affairs.

The court attached two child support worksheets to its March 23, 2012 modification ruling. In Exhibit 1, the court calculated the child support payment with Jeremy's annual income at \$24,960. In Exhibit 2, the court substituted his annual income at \$27,500. Determining Jeremy's annual salary to be \$27,500, the court denied his petition to modify, reasoning: "Quite frankly, the Court believes and finds that the Respondent's earning capacity is the amount stipulated in the original decree. However, the issue of a raise in support is not before the court."

Jeremy moved to amend or enlarge the order, arguing, in part, that the court miscalculated Jessica's income at \$32,200 annually, rather than \$31,200. On April 16, 2012, the district court recalculated the guidelines with Jessica's

annual income at \$31,200 and noted that Jeremy's income was figured as self employment, but affirmed its other findings. The court amended Jeremy's child support obligation to be \$495 plus \$68.75 in medical support for a \$563.75 monthly payment.

Jeremy filed a second motion to enlarge or amend. After the court denied the motion, Jeremy appealed pro se.<sup>3</sup> Jessica did not file an appellate brief.

## **II. Scope and Standards of Review**

We review child support modification actions de novo. *In re Marriage of McKenzie*, 709 N.W.2d 528, 532 (Iowa 2006). While we give weight to the district court's findings of fact, especially regarding witness credibility, we are not bound by them. *Id.* To the extent that interpretation of the child support guidelines is a legal question, our review is for errors at law. *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004).

## **III. Analysis**

A court may modify a child support order upon a substantial change in circumstances. Iowa Code § 598.21C(1) (2011) (listing factors). A substantial change occurs when the child support order varies by at least ten percent from the amount due under the current child support guidelines. *Id.* § 598.21C(2)(a). The party seeking to modify must prove by a preponderance of the evidence that a substantial change in circumstances occurred since the entry of the decree. *In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 331 (Iowa Ct. App. 2005).

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<sup>3</sup> Both parties appeared pro se throughout the proceedings.

Courts use the child support guidelines to determine support obligations. *In re Marriage of Maher*, 596 N.W.2d 561, 565 (Iowa 1999). They also may consider relevant statutory factors when the guideline award would be unjustified or inappropriate, or otherwise require judicial discretion. *Id.*; see Iowa Ct. R. 9.11. Courts first determine the net monthly income of each parent at the time of the hearing. *In re Marriage of Wade*, 780 N.W.2d 563, 566 (Iowa Ct. App. 2010). Net monthly income is gross income minus specifically enumerated deductions. *McKee v. Dicus*, 785 N.W.2d 733, 740 (Iowa Ct. App. 2010).

**A. Did the District Court Erroneously Assign Jeremy and Jessica Additional Dependent Exemptions in The Child Support Worksheets?**

Jeremy argues because the original decree ordered Jessica to claim both daughters as her dependents, which she continues to do, the district court erred in assigning him one dependent exemption and Jessica three dependent exemptions in its modification child support worksheets.

Jeremy is correct that the decree awarded Jessica tax exemptions for both children. But the court calculated the original child support worksheet including exemptions for Jeremy plus one dependent, and including exemptions for Jessica plus one dependent.

In the modification order, the court found: “[Jeremy] is required to use married filing separate status for the guideline computation. He also receives one exemption. [Jessica] must use head of household but has three exemptions for herself and two children.” Contrary to the court’s explanation in the written order, both worksheet guidelines completed by the district court assign Jeremy

two personal exemptions—“self plus 1 dependent[ ]”—and Jessica with four personal exemptions—“self plus 3 dependents.”

Iowa Court Rule 9.5(1) instructs the court to deduct from the parties’ net monthly income federal income tax as calculated under the guideline method in rule 9.6. Rule 9.6(5) requires the court to assign a personal exemption for each parent, plus the custodial parent shall be assigned “one additional dependent exemption for each mutual child of the parents,” unless the noncustodial parent provides information that the noncustodial parent has been allocated the dependent exemption for such child.

Both worksheet calculations completed by the district court for the modification ruling contravene rule 9.6(5). Jeremy brought the errors to the court’s attention in his first motion to amend. The court responded: “Exemptions are correct as previously entered.” We disagree. Because the parties’ two daughters are the only mutual children of the marriage, Jessica was the custodial parent of both, and the dissolution decree assigned her both tax exemptions, Jessica was entitled to three exemptions and Jeremy to one. The court erroneously assigned Jeremy one child as a tax dependent and Jessica three children as tax dependents. Consistent with rule 9.6(5), on remand, the district court shall attribute two dependent exemptions to Jessica and none to Jeremy.

**B. Should the District Court Have Added a Cash Medical Support Payment to the Child Support Payments?**

Jeremy argues because Jessica has health insurance available at a reasonable cost, based on the medical support table in rule 9.12(4), the district

court improvidently added cash medical support payments to his child support obligation.

An order that provides for temporary or permanent child support must include a provision for medical support as well. Iowa Code § 252E.1A(1). If the district court orders the custodial parent to provide a health benefit plan, it may also order the noncustodial parent to provide reasonable cash medical support payments in lieu of a health benefit plan. *Id.* § 252E.1A(4).

The district court originally ordered Jessica to maintain the daughters' health insurance, and as its modification order recognizes, the dissolution decree included "no separate order for medical support." The district court does not explain why it included a cash medical support payment in its 2012 order. The record does not show Jessica is unable to provide health insurance coverage for their daughters at a reasonable cost.<sup>4</sup> See Iowa Code § 252E.1A(2).

The original dissolution decree did not order cash medical support payments. Because the district court does not make a finding that circumstances now require Jeremy to pay cash medical support pursuant to rule 9.12, we reverse on that basis. Absent additional evidence relating to the cost of the health insurance plan carried by Jessica, cash medical support payments should not be included.

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<sup>4</sup> In Jessica's October 28, 2012 affidavit of financial status, she lists her monthly expense for herself and both daughters to be \$100 per month, which is below the \$130 ceiling listed in the rule 9.12 table.



**C. Do the Changes in the Parties' Finances Warrant Modification?**

Jeremy contends the district court failed to consider the parties' changed financial conditions since the original decree. He cites his increased costs in raising his fourth child, born since the decree, and the expenses of his oldest son's therapy. Jeremy alleges Jessica's monthly living expenses substantially decreased since she moved into her fiancé's home. He also asserts the costs of traveling to see his daughters are an extra expense that justifies modification. He concludes based on the statutory factors in section 598.21C, the district court should have considered these changes to modify his monthly payments.

The district court was not persuaded by Jeremy's reasoning: "The Court understands the personal and family issues addressed by Respondent. However, the above facts do not support a finding of a substantial change of circumstances and therefore the Respondent's request to lower his child support must be and is denied."

On remand, the district court should recalculate the child support by using the appropriate dependent exemptions, and should remove the cash medical support payment. Then the court should consider under rule 9.11 whether any of Jeremy's above-listed arguments warrant a variance from the guidelines amount of support. We do not retain jurisdiction. Costs on appeal are taxed one half to each party.

**REVERSED AND REMANDED.**