

IN THE COURT OF APPEALS OF IOWA

No. 3-440 / 12-1275
Filed May 30, 2013

STATE OF IOWA, EX REL., K.M.C., J.D.H., AND R.J.C.,
Petitioner-Appellee,

vs.

JEREMIAH HANSEN HEATER,
Respondent-Appellant,

vs.

JOEANN M. COMBS,
Respondent-Appellee.

Appeal from the Iowa District Court for Howard County, Margaret L. Lingreen, Judge.

A father appeals the district court's order modifying his child support obligation. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant.

Thomas J. Miller, Attorney General, Patricia Hemphil, Tamara Lorenz, and Erin Eastman, Assistant Attorneys General, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

A father appeals the district court's order modifying his child support obligation. We affirm.

I. Background Facts and Proceedings

Jeremiah Heater and Joeann Combs are the parents of K.C., J.H., and R.C. They were never married. In 2004, the district court entered an order establishing paternity and accrued child support in the amount of \$2532, to be paid in monthly installments of \$42.21. Because Heater lived in the same household as Combs and the children, the court noted "current support, medical support and the allocation of uncovered medical expenses are reserved." Heater satisfied the obligation for payment of accrued support in 2009.

In 2012, the child support recovery unit filed a notice of intent to conduct a review for modification of the support order, noting "[t]he dollar amount of the support obligation was previously set at zero; however, circumstances have changed¹ and support should be ordered." See Iowa Code § 252H.1 (2011). Following a hearing, the district court ordered Heater to pay \$941.61 in child support and \$160.71 in cash medical support per month.

Heater appeals, contending (1) the district court should not have considered overtime or prevailing wage jobs in calculating his gross income, and (2) the district court erred in the amount of medical support it assessed. Our review is de novo. *Markey v. Carney*, 705 N.W.2d 13, 19 (Iowa 2005).

¹ The record indicates Heater no longer lived with the family and Combs had become unemployed.

II. Overtime Pay

“Overtime wages are within the definition of gross income to be used in calculating net monthly income for child support purposes.” *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992). However, “where overtime pay appears to be an anomaly or is uncertain or speculative, a deviation from the child support guidelines may be appropriate.” *Id.* The burden is on the recipient of the extra income to prove that the extra income is “anomalous, uncertain, or speculative.” *Markey*, 705 N.W.2d at 20.

Heater testified he has been employed in the well drilling business for approximately six years. Until September 2011, he worked for Envirotec, where he earned \$11 per hour and worked overtime. Envirotec laid its employees off during the winter and spring—the length of the layoff depended on the weather. Heater earned unemployment during the periods of seasonal layoff. His 2009 income was approximately \$37,000 and his 2010 income was \$34,364.

In September 2011, Heater began working for Sam’s Well Drilling. He testified there are no major differences between the two jobs in terms of income or benefits. He earns \$13.50 per hour and works “around 56 to 60 [hours per week], usually.” His overtime rate is \$20.25 per hour. He testified this amount of overtime was “close” to what he worked at Envirotec. Heater also has the opportunity to earn additional pay for work on government jobs, although those jobs are not guaranteed. He still experiences a seasonal layoff, during which he earns \$375 per week in unemployment. Specifically, in 2012, Heater was laid off from January through March. His 2011 income was approximately \$38,153 and his 2012 income through June 2, 2012 was \$9054.33.

In calculating Heater's income for purposes of child support, the district court relied on Heater's testimony, and observed he earns \$13.50 per hour base pay and \$20.25 per hour overtime pay, and receives unemployment of \$375 per week for approximately 13 weeks per year. Although the court observed Heater stated he works 56-60 hours per week, the court calculated his annual income using 56 hours per week, for 39 weeks per year (39 weeks of work + 13 weeks of layoff = 52 weeks per year). The court determined Heater made \$38,751 per year. The court further found it was "inequitable" to use Combs' actual income of \$0, and imputed a full-time minimum wage earning capacity of \$15,080 per year.² Using these figures, the court calculated Heater's child support obligation for the three children to be \$941.61 per month.

Heater contends the district court erred in imputing additional income other than his base salary because "there is no guarantee of overtime [he] may earn." Heater's own testimony belies this contention. At trial, he testified he works an average of 56 to 60 per week. "[O]nce evidence of extra income has been introduced, . . . the burden is on the recipient of the income to establish that it should be excluded from gross income as uncertain and speculative." *Id.* at 19. Clearly, where Heater testified he works 16 to 20 hours per week overtime, we cannot find he "carried his burden to prove his commission was anomalous, uncertain, or speculative." *Id.* at 20 ("The recipient of extra income is in the best position to present the underlying circumstances to the court, which makes it fair to place the burden on the recipient to show the extra income should be excluded or considered in some other manner.").

² Heater does not dispute the court's imputed income figure for Combs.

The facts of this case show Heater's overtime has been consistent and will be consistent. *Compare Brown*, 487 N.W.2d at 334 (observing overtime should be included in determining income where it has been consistent and will be consistent) *with In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 333 (Iowa Ct. App. 2005) (determining overtime should not be considered where it has not been consistent and will not be consistent). And should Heater's income change substantially, he has the option of filing an action to modify his child support obligation. *See Markey*, 705 N.W.2d at 20 (stating that father of a child was "free to bring a modification action" if his income were to change in an attempt to lower his child support obligation).

III. Medical Support

In addition to monthly child support, the district court entered an order for the payment of cash medical support for the children. *See Iowa Ct. R. 9.12(3)* (requiring the court to enter an order for cash medical support if neither parent has health insurance available at "reasonable cost"). Heater contends the district court erred in the amount of medical support it assessed by basing it on his incorrect net income. He claims "the amount of cash medical support should be no more than \$149 per month as requested by the State."³

We have already concluded the district court's finding in regard to Heater's income is appropriate.⁴ The court based the cash medical support obligation on that finding. Heater offers no support for his claim, other than the bald assertion

³ In his reply brief, Heater contends his cash medical support obligation should be "no more than \$104 per month."

⁴ The court found Heater's income to be slightly higher than the amount proposed by the State.

that the court incorrectly determined his income and therefore, incorrectly determined his cash medical support. We are not persuaded by his contention. And again, we observe that should his income change substantially, Heater has the option of filing an action to modify his cash medical support obligation. See *Markey*, 705 N.W.2d at 20.

Having reviewed the issues raised on appeal, we affirm the order of the district court modifying Jeremiah Heater's child support obligation.

AFFIRMED.