IN THE COURT OF APPEALS OF IOWA

No. 8-684 / 08-0348
Filed November 13, 2008

STATE OF IOWA, EX REL.,
JADEN K. DENGER,
Petitioner-Appellee,

vs.

JACOB A. DENGER,
Respondent-Appellant.

Appeal from the Iowa District Court for Jackson County, Charles H. Pelton, Judge.

Jacob A. Denger appeals the district court order determining his child support, accrued support, and medical support obligations for his minor child. **AFFIRMED.**

Steven J. Kahler of Schoenthaler, Roberg, Bartelt & Kahler, Maquoketa, for appellant.

Thomas J. Miller, Attorney General, Wayne J. Bergman, Assistant Attorney General, Sara Bradley, Child Support Recovery Unit, Clinton, and Kevin Kaufman, Davenport, for appellee.

Jeffrey Farwell, Clinton, for mother.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Jacob A. Denger appeals the district court order determining his child support, accrued support, and medical support obligations for his minor child, Jaden. He claims the court erred in calculating his child support obligation, and in establishing his child support arrearage and medical support obligation. We affirm.

This case began in July 2007 as an administrative action against Jacob to establish his obligation to provide support for Jaden. A "Notice of Support Debt—Chapter 252C" was issued by the Iowa Child Support Recovery Unit (CSRU) and notified Jacob of CSRU's intent to establish an order requiring him to provide current child support and medical support for Jaden. Because the child's mother, Jennifer Current, had not received public assistance in the form of Family Investment Program benefits for Jaden the CSRU's notice did not request the establishment of accrued support. When Jennifer contested the CSRU's support calculations, CSRU certified the matter to the district court for hearing pursuant to section 252C.4.

At the time of the district court hearing Jacob was twenty-six years of age and Jennifer was twenty-four years of age. They have one child together, Jaden, born in January 2006. The parties were never married, but lived together from April 2006 until the end of May 2007. Jaden has lived with Jennifer since the parties separated. Jacob has a college degree in agricultural studies from Iowa State University. At the time of the hearing Jacob was running a cow-calf operation and selling seed corn for Crow's Hybrids. Jennifer graduated from high

school and has not been employed outside the home, other than for a two-day period, since Jaden's birth.

Although Jennifer did not formally intervene in this action, the district court allowed her to participate in the hearing with her counsel. Jacob did not object to Jennifer's informal intervention and participation at the hearing. Near the conclusion of the hearing Jennifer asked the court to order accrued support beginning as of the time she moved out of the residence, June 2007, through the hearing date. Jacob did not object that she had failed to properly plead the issue of accrued support.

In a written ruling filed February 1, 2008, the district court concluded Jacob has an earning capacity of $45,000 per year gross income and that Jennifer has the ability to earn $20,000 per year gross income. It requested the CSRU to calculate Jacob's support obligations in accordance with the Child Support Guidelines based on these figures. The court ordered the child support obligation to be "retroactive to 90 days prior to the filing of this Petition."[1] It also ordered Jacob to purchase medical insurance "at least equivalent to the basic Blue Cross Blue Shield plan for the benefit of Jaden," and that the cost of this insurance be taken into account when calculating his support obligation. Based on these findings and conclusions, on February 22, 2008, the court entered a "252C Judicial Support Order" establishing Jacob's current support obligation at $545.00 per month, establishing an accrued child support arrearage of $5,450.00

[1] By "this Petition" the court apparently meant the July 2007 "Notice of Support Debt," as the court's ensuing order of February 22, 2008, ordered ten months of accrued support, that is ordered support from April 2007.

payable at the rate of $54.50 per month, and requiring that he provide health insurance in accordance with its prior order.

Jacob appeals, claiming the court erred in (1) calculating his child support obligation, because it should have used his actual earnings rather than his earning capacity to determine his support obligation, (2) ordering that he pay accrued support, because the court did not have authority to do so, and (3) establishing his medical support obligation, because the court overreached its statutory authority by requiring him to purchase health insurance at least equivalent to the basic Blue Cross-Blue Shield plan.

We review this equity action de novo. Iowa R. App. 6.4; *State ex rel. Houk v. Grewing*, 586 N.W.2d 224, 226 (Iowa Ct. App. 1998). We examine the entire record and adjudicate anew those issues properly raised and preserved for appellate review in the district court. *Houk*, 586 N.W.2d at 226. We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but instead make such findings and conclusions as from our de novo review we find appropriate. *Lessenger v. Lessenger,* 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968).

Jacob first contends the district court erred in calculating his child support obligation for Jaden. More specifically, he argues the court erred in using his earning capacity rather than his actual earnings to determine his child support obligation without making findings as to why substantial injustice would be done in using his actual earnings. He asserts the court should have used his two-year average income from Crow's and subtracted one-half of his four-year average

farm loss to establish his actual gross income at $19,682.50 for purposes of figuring child support.

As set forth above, the district court found Jacob had an earning capacity of $45,000 per year gross income and that Jennifer had an earning capacity of $20,000 per year gross income. The court ordered CSRU to use these figures to determine Jacob's child support obligation. "In setting an award of child support, it is appropriate to consider the earning capacity of the parents." *In re Marriage of Flattery*, 537 N.W.2d 801, 803 (Iowa Ct. App. 1995). However, before the court utilizes earning capacity rather than actual earnings, a finding must be made that if actual earnings were used, a substantial injustice would result or that adjustments would be necessary to provide for the needs of the child and to do justice between the parties. *Id*. Although Jacob is correct that the district court here did not make explicit factual findings in this regard, because our review is de novo we may make our own findings and conclusions on the issues properly raised before us. *See Lessenger,* 201 Iowa at 1078, 156 N.W.2d at 846.

At the time of the hearing Jacob had two sources of income, his cow-calf farming operation and selling seed corn for Crow's Hybrids as an independent contractor. Jacob has farmed since his graduation from college in 2004. His farming operation has operated at a net loss from 2004 through 2007. Jacob's "Form 1099 MISC" from Crow's for 2007 shows a gross income (as an independent contractor) of $39,650.[2] His district manager projected Jacob would earn between $24,000 and $26,000 total income from Crow's in 2008. When

[2] We note that $9,000 of this was to pay back his former employer for draws he had taken against his commissions.

assessing whether to use earning capacity we examine not only present earnings but also such things as employment history, earnings history, and reasons for the parties' current employment situation.

Jacob was employed at River Valley Cooperative from approximately early summer of 2004 until early August 2006. His "Form W-2" from River Valley for 2006 shows wages of $34,464.96 for his employment there for the approximately seven months he worked there in 2006. At the hearing Jacob testified he left his employment at River Valley in August 2006 to start up Deep Creek Applicators, L.L.C. with a partner in order to devote more time to his farming operation. Deep Creek Applicators pumped, hauled, and injected liquid cattle and hog manure in farm fields. Jacob testified he sold his interest in Deep Creek Applicators in January 2008, because it was negatively impacting both the time he had for his farming operation and the amount of time he had to spend with Jaden. The one full year he was involved with Deep Creek Applicators Jacob earned $36,850.

Jennifer is not employed outside the home and has not been since Jaden's birth, other than for a two-day period in 2007. Prior to Jaden's birth Jennifer worked at her parents' restaurant earning $6.50 per hour plus tips. In 2007 she worked at Family Dollar for two days earning $9.45 per hour. Jennifer testified at hearing that she quit that job because it involved too much heavy lifting. She agreed on cross-examination that had she continued to work there she would have earned $19,600 per year.

Upon our de novo review we conclude a substantial injustice would result to Jaden and to Jennifer if Jacob's actual earnings rather than his earning capacity were used to determine his child support obligation.

Jacob has successfully supplemented his farm income by selling seed corn for the last few years and there is no evidence in the record he will not continue to do so in the future. In addition, he has supplemented his farming income with other farm-related employment in the past that earned him substantial income and had the potential to earn him even more. Clearly, Jacob has the current capacity to earn substantial income beyond that provided by his calf-cow farming operation. Although we recognize his desire to expand his farming operation and be able to farm full-time, his responsibilities to his child must necessarily come before his own career aspirations. Furthermore, in order to do justice between the parties the financial obligations for the child must be shared. "Both parents have a legal obligation to support their children, not necessarily equally, but in accordance with his or her ability to pay." *In re Marriage of Blum*, 526 N.W.2d 164, 165 (Iowa Ct. App. 1994). Here, the district court not only imputed an earning capacity to Jacob, but also imputed an earning capacity of $20,000 to Jennifer despite the fact she was unemployed at the time of the hearing and had been for approximately two years. The court's support order was equitable and fair in that it used the earning capacity of *each* party, rather than the actual income of each, in determining Jacob's child support obligation.

Accordingly, we conclude the district court did not err in using Jacob's earning capacity to determine his child support obligation in order to provide for the needs of the child and do justice between the parties. We agree with the district court that Jacob has the proven ability to earn significantly more than his current income. It would be unfair and result in substantial injustice to Jaden and to Jennifer to determine Jacob's support obligation based only on his current income. The district court did not err in finding Jacob has an earning capacity of $45,000 per year gross income for purposes of determining his child support obligation.

Jacob next contends the district court erred in establishing an accrued support obligation. When a chapter 252C administrative support action is certified to the district court the resulting hearing is considered to be an original hearing before the court. Iowa Code § 252C.4(6). Section 252C.4(4) gives the district court authority to enter a support order after the case has been certified:

> The court shall establish the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

This section authorizes the establishment of an accrued support judgment. Neither this nor any other section in chapter 252C places any limitation on the court's power to order accrued support.

Jacob argues the district court must look to the Iowa Administrative Code to interpret section 252C.4(4) in order to determine when a court may order accrued support. Specifically, he cites that portion of the Iowa Administrative Code which states in part:

> The payment of public assistance to or for the benefit of a dependent child or a dependent child's caretaker creates an accrued support debt due and owing by the child's parent to the department. The amount of the accrued support debt is based on the period of time public assistance payment or foster care funds were expended, but is not created for the period of receipt of public assistance on the parent's own behalf for the benefit of the dependent child or the child's caretaker.

441 Iowa Admin. Code r. 99.4(3). Based on this rule, Jacob argues that in a chapter 252C support action the district court may only order accrued support when the child's caretaker has received public assistance, such support may only be for periods during which public assistance was expended, and it may only be in favor of the Iowa Department of Human Services.

However, the rules in the administrative code only prescribe procedures state *agencies* must follow when those *agencies* take actions regarding the rights and duties of the public. *See* Iowa Code § 17A.1(2). "[T]he meaning of a statute is always a matter of law, and final construction and interpretation of Iowa statutory law is for this court." *Schmitt v. Iowa Dep't of Soc. Serv.,* 263 N.W.2d 739, 745 (Iowa 1978). Further, the administrative rules at issue here specifically state they "pertain only to administrative actions or procedures used by the [child support recovery] unit in providing the services identified." 441 Iowa Admin. Code ch. 99 (preamble).

Accordingly, we conclude that under section 252C.4(4) the district court has the power to order accrued support and the discretion to determine when to do so. The administrative rules do not control or restrict this power of the district court to order accrued support in a chapter 252C proceeding.

Finally, Jacob argues the district court erred in establishing his medical support obligation. The district court ordered Jacob to provide Jaden with "medical and hospitalization insurance at least equivalent to the basic Blue Cross Blue Shield plan." Jacob concedes the court had authority to enter an order requiring him to provide medical support in the form of an individual health benefit plan for Jaden pursuant to chapters 252C and 252E. However, he argues this power is limited to require him to provide only "basic coverage" as defined in section 252E.1(2), and the type of health insurance coverage ordered by the court here exceeds this basic coverage.

First, we do not believe Jacob has demonstrated that coverage under a basic Blue Cross-Blue Shield plan or its equivalent in fact exceeds the "basic coverage" defined in section 252E.1(2). "Basic coverage" is defined there as "coverage provided under a health benefit plan that at a minimum provides coverage for emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, and laboratory and x-ray services." Iowa Code § 252E.1(2).

As set forth above, once a chapter 252C support action is certified to the district court, chapter 252C allows the court to, among other things, establish medical support pursuant to chapter 252E. Iowa Code § 252C.4(4). Medical support "means either the provision of a health benefit plan, including . . . an individual health benefit plan . . . to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan. . . . Iowa Code § 252E.1(9). A "health benefit plan" is defined as "*any* policy or contract of

insurance, indemnity, subscription or membership issued by an insurer, health service corporation, health maintenance organization, or *any* similar corporation, organization, or a self-insured employee benefit plan, for the purpose of covering medical expenses." Iowa Code § 252E.1(7) (emphasis added). Under this broad definition of "health benefit plan" we conclude the court's requirement that Jacob provide health insurance for Jaden at least equivalent to the basic Blue Cross-Blue Shield plan does not require greater coverage than, or coverage exceeding, the "basic coverage" as defined in section 252E.1(2).

Second, there is no provision in chapter 252E that limits the district court to ordering an individual health benefit plan that provides for only "basic coverage" as defined in section 252E.1(2). We cannot conclude that the term "basic coverage" is used in that chapter to limit the court's authority, when ordering medical support in the form of an insurance policy, to ordering "basic coverage" only. Accordingly, we conclude the language of chapter 252E does not limit the court's power as argued by Jacob and his reliance on the definition of "basic coverage" in support of this proposition is without merit.

Based on our de novo review of the record, and for the reasons set forth above, we conclude the district court did not err in using Jacob's earning capacity, which it appropriately determined to be $45,000 per year gross income, rather than using his actual earnings, for the purpose of calculating his child support obligation. Using his actual earnings would result in substantial injustice to Jaden and to Jennifer. We further conclude the court did not err in establishing Jacob's accrued child support obligation, because the court is not

bound or limited by the administrative rules and has the power under chapter 252C to establish such accrued support. Finally, we conclude the court acted within its statutory authority under chapter 252E in requiring Jacob to provide health insurance for Jaden at least equivalent to the basic Blue Cross-Blue Shield plan. The statute does not limit the court to ordering only "basic coverage."

AFFIRMED.