

IN THE COURT OF APPEALS OF IOWA

No. 9-051 / 08-0903
Filed March 11, 2009

SHAUNA BOYLAN
n/k/a SHAUNA MUMMEY,
Plaintiff-Appellee,

vs.

SHANE R. TAGGART,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

Shane Taggart appeals the issues of child support, health insurance, and transportation in this action modifying the parties' paternity decree. **AFFIRMED.**

Joseph A. Nugent, West Des Moines, for appellant.

Jon J. Puk of Walentine, O'Toole, McQuillan & Gordon, Omaha, Nebraska, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

MAHAN, P.J.

Shane Taggart appeals the issues of child support, health insurance, and transportation in Shauna Boylan's¹ action for modification of the parties' paternity decree. We affirm.

I. Background Facts and Proceedings.

Shane and Shauna are the parents of Chelsea, born in October 1991, and Kaylinn, born in February 1995. The parents never married. On April 22, 1998, they jointly stipulated to an equity action declaring Shane to be the children's father, granting joint legal custody, granting Shauna physical care, and granting Shane visitation. The order also addressed child support, insurance, and transportation. Shane has been self-employed as a heating, ventilating, and air conditioning technician since 2002 and lives near Mondamin. He is married and has three other children. Shauna is a human resources manager for Midland Newspapers and lives in Glenwood. She is married, and her husband has a son who also lives with them.

On April 20, 2002, the district court entered a modification order in accordance with terms the parents negotiated and mutually agreed to. Shane was ordered to pay child support in the amount of \$502 per month until the eldest child reached the age of majority, at which time child support was to be reduced to \$337 per month for the remaining child. Shane was to provide health and dental insurance coverage for the children. Shane was also responsible for transportation for the children to and from visitation.

¹ Shauna Boylan is now known as Shauna Mummey.

For various reasons, the parents did not adhere to the April 20, 2002 modification order. Specifically, Shane did not pay any child support for nearly two years during 2003 to 2005. Since then, Shane has paid \$200 per month in child support. Furthermore, Shauna provided the children's dental and health insurance under her plan through her employer. On March 23, 2007, Shauna petitioned the court to modify Shane's child support and insurance obligation. Shane counterclaimed. After a hearing, the district court entered a modification order on March 17, 2008. The court did not find a substantial change in circumstances with regard to Shane's child support obligation and ordered it to remain at \$502 per month. However, the court ordered Shane to pay an additional \$165 per month in child support arrearage and \$50 per month toward the children's health insurance as long as they were covered under Shauna's policy. It further ordered that Shane remain responsible for the children's travel relating to visitation, but noted that Shane's wife could provide transportation when Shane was not available. Thereafter, Shane filed a motion to reconsider, which the court denied. He now appeals.

II. Scope and Standard of Review.

We review de novo. Iowa R. App. P. 6.4. We give weight to the district court's fact findings, especially when we consider witness credibility, but we are not bound by those findings. Iowa R. App. P. 6.4(6)(g). The criteria governing our decision is the same whether or not the parties are married. *Petition of Purcell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). Our primary consideration is

the best interests of the children. *In re Marriage of Decker*, 666 N.W.2d 175, 177 (Iowa Ct. App. 2003).

III. Issues on Appeal.

A. Child Support.

Shane argues his child support obligation is excessive because the district court improperly determined his income. He contends the court should have based his child support obligation on an average of his actual earnings with appropriate business deductions due to his fluctuating income. Shane alleges that in 2003 and 2004 he had negative earnings. He further alleges his earnings after appropriate deductions in 2005 and 2006 were \$10,902 and \$13,999, respectively. Shane argues the court should have considered his average income from 2005 and 2006 (\$12,051) to determine his child support obligations.

To ascertain a party's income for the purposes of determining child support, we must determine the parent's current monthly income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). We are often required to carefully consider all the circumstances relating to the parent's income. *Id.*

Although Shane's tax returns in recent years show an income lower than \$30,000, the district court considered other evidence in determining his earning capacity, including Shane's voluntary self-employment status and his income in relation to his "appropriate tax deductions." Prior to deductions, Shane's 2005 and 2006 tax return displays gross receipts in the amount of \$41,547 and \$49,311, respectively. We find Shane's testimony with regard to his tax

deductions for items of personal use makes his argument regarding his actual earnings unpersuasive.² Furthermore, we note that in 2002 the district court entered a modification order the parties had negotiated and agreed to. At that time Shane was self-employed and stipulated that his earning capacity was \$30,000 per year. As Shane testified, his earnings have improved since he first became self-employed in 2002 when he stipulated to his earning capacity.

We have carefully reviewed the record and agree with the district court that there was no material and substantial change in circumstances to support a modification in Shane's child support obligations that the parties agreed to several years ago. We also agree with the court's order for Shane to pay an additional \$165 per month in arrearage. We affirm as to this issue.

B. Health Insurance.

Shane argues the district court erred in finding he should contribute fifty dollars per month toward Shauna's health insurance premiums. He contends

² Specifically, Shane deducted over \$20,000 in both 2005 and 2006 as truck expenses. He also deducted over \$4000 in those years for business use of his home. According to Shane's testimony:

Q. [Plaintiff's counsel]: [T]echnically you've got \$49,311 in revenue and you're paying your car out of that and you're deducting your house out of that. You're only claiming \$13,900, if you will, income from your business in 2006, correct? Isn't that what that shows on line—:
A. [Shane]: \$13,999.

Q. Correct. But in reality you'd have \$20,000 at least more because that's your car payment that you have income from your business to pay your car, correct? A. Uh-huh.

Q. Just like [Shauna] has income from her job to pay her car?
A. Correct.

Q. All right. And, of course, the house write-off, that's just a tax benefit for you? A. Right.

Q. [T]he reality is you have income to pay your car, pay your mortgage and technically those things are deducting out of your revenue or income that you're receiving from the sales at HVAC or your R & R Specialists as a write-off? A. Right.

this ruling is unjust enrichment to Shauna because she elected to purchase family coverage, and it costs her no additional expense to include Chelsea and Kaylinn under the plan.³

Upon our review, we find Shane's argument meritless. Under the modification order in 2002 Shane was to provide health insurance for the children. He failed to do so and thereafter Shauna included them on her plan. From 2002 to 2006 Shauna incurred over \$12,000 in increased insurance costs upon increasing her insurance coverage. We find it reasonable that the court order Shane to contribute fifty dollars per month toward the children's health insurance expenses. We affirm as to this issue.

C. Transportation.

Shane argues the district court erred in finding he should be solely responsible for transportation. Under the modification order in 2002 Shane negotiated and agreed to provide all transportation relating to visitation with the children. When parties jointly stipulate to a modification order, there must be evidence to establish a substantial change of circumstances surrounding said agreement before changes will be made. See *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Upon our review, we find no material and substantial change in circumstances to support a modification in Shane's transportation obligations. Furthermore, Shane requested the court to allow his wife to provide transportation for the children when Shane was unavailable, and the court granted his request. We affirm as to this issue.

³ Shauna's family coverage also insures her husband and his son. However, her husband and son could have VA coverage if she chose to forego family coverage with her employer and get individual coverage just for herself.

Costs on appeal are assessed to Shane.⁴

AFFIRMED.

⁴ We find this after considering the motion to assess printing costs of appendix to appellee that was filed by Shane.