IN THE COURT OF APPEALS OF IOWA

No. 9-921 / 09-0333
Filed December 30, 2009

IN RE THE MARRIAGE OF CAMILLE A. SLOAN CRAIG AND SCOTT EDWARD CRAIG

Upon the Petition of
CAMILLE A. SLOAN CRAIG
n/k/a CAMILLE A. SLOAN SCHROEDER,
Petitioner-Appellee,

And Concerning
SCOTT EDWARD CRAIG,
Respondent-Appellant.

Appeal from the Iowa District Court for Boone County, Timothy J. Finn, Judge.

A father appeals from a district court ruling modifying the child support and visitation provisions of the parties' dissolution decree. **AFFIRMED.**

Anjela A. Shutts and Diana L. Miller of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Christine R. Keenan, Ames, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Danilson, J., takes no part.

DOYLE, J.

Scott Craig appeals from a district court ruling that modified the child support and visitation provisions of the decree dissolving his marriage to Camille Sloan Craig, now known as Camille Sloan Schroeder. Upon our de novo review, we affirm the judgment of the district court.

I. Background Facts and Proceedings.

Scott and Camille's marriage was dissolved in 1999. The dissolution decree incorporated the parties' stipulation that their then two-year-old son, Channing, would be placed in their joint legal custody and in Camille's physical care. Scott was granted weekly visitation with Channing and ordered to pay child support to Camille.

Scott filed his first petition to modify the dissolution decree in May 2000, seeking additional visitation with Channing. The parties agreed in November of that year to modify the decree to provide for visitation every other weekend beginning Friday at 5:00 p.m. and ending on Sunday at 5:00 p.m., along with four weeks of visitation during the summer. Scott and Camille additionally agreed that Scott would be responsible for transporting Channing to and from visits.

Scott filed another petition to modify in July 2004 after moving to South Dakota. He alleged that move necessitated a change in his visitation schedule, and he requested that Camille contribute equally to the transportation costs for his visitation with Channing. Following a hearing, the district court entered an order in June 2005 modifying the decree to provide for additional visitation during the summer. The court also increased Scott's child support obligation.

Scott filed a third petition to modify in April 2007, seeking physical care of Channing. Prior to the trial, the parties agreed to again modify the summer visitation provisions of the decree with the qualification that Scott provide Camille "with contact telephone numbers and . . . with the location of the child should [Scott] leave the state of South Dakota prior to leaving the state of South Dakota." They also agreed to increase Scott's child support obligation to $498 per month based upon a financial affidavit filed by Scott in September 2007 that stated his gross annual income was $41,566.40.

In February 2008, Channing told Scott that his stepfather, Craig Schroeder, had hit him multiple times with a toy that Channing had been playing with. Scott became concerned for Channing's well-being and decided to take him to South Dakota during their weekend visitation. Scott lied to Camille and told her they were staying at a hotel in Ames for the weekend. He did not answer any of Camille's telephone calls until shortly before he was scheduled to take Channing home. He then told her only that she should have her attorney contact his attorney in the morning. Scott planned on initiating proceedings in South Dakota to obtain physical care of Channing. Camille was "[b]eyond worried. Beyond upset" because she did not know where Channing was. She contacted police in Iowa and South Dakota, eventually resulting in Scott's arrest[1] and Channing's return to her.

Camille filed an application for rule to show cause several days later, requesting the district court find Scott in contempt for violating the visitation provisions of the parties' dissolution decree and for his failure to pay child

[1] The criminal charge against Scott was later dismissed.

support in January and February 2008. Scott responded by filing a petition to modify the decree, seeking physical care of Channing due to the "repeated and ongoing emotional and physical abuse at the hand of [Camille's] husband." Camille filed a counterclaim to Scott's petition for modification, requesting that Scott's visitation "be modified to provide for supervised or restricted visits as recommended by the professionals that have been counseling the minor child." She also sought an increase in Scott's child support obligation.

Camille filed a second application for rule to show cause in September 2008, alleging Scott had again failed to satisfy his child support obligation in July, August, and September. Both contempt applications and Scott's petition to modify[2] came before the district court for trial in October 2008.

At the time of trial, Scott testified that he was self-employed as a general contractor and land developer. He estimated his net monthly income was zero due to the poor housing market. He testified he was able to "make ends meet" because his mother "helps me with whatever expenses and things that I have." According to Scott, "someday when the market turns back around and we put another development together, then, of course, that money will be repaid to her." He believed he owed his mother "somewhere in the neighborhood of about $60,000."

[2] Camille dismissed her counterclaim at the start of the trial. The district court's ruling nevertheless modified Scott's visitation and child support obligation as requested by Camille in her counterclaim. We note that Scott does not challenge the court's authority to do so in this appeal. *See Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) ("[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.").

Scott's mother confirmed that she has given Scott between $55,000 and $60,000 within the past year. She explained that she is involved in real estate and land development in South Dakota, and Scott assists her with that endeavor. He "took over the development of all of the lots and selling of the homes and . . . built some homes himself . . . . to get the whole area developed up." He also attends board meetings with his mother and her partners. But Scott's mother testified, "I don't pay him to work for me. I just help him out when he needs me. . . . It's kind of a loan."

Following the trial, the district court entered a ruling denying Scott's petition to modify Channing's physical care and finding him in contempt of the visitation and child support provisions of the parties' dissolution decree, as alleged by Camille. The court modified the visitation schedule to provide in relevant part as follows:

> Scott shall not take Channing from the state of Iowa, or during the summer visitations from the state of South Dakota without the prior notification to Camille of where Channing will be, the address of the same, and a telephone number where he can be reached. The Court expects strict compliance with this provision in order to avoid a situation similar to [that] which occurred in 2008.

The court also directed that if "the parties cannot agree on where the exchange of Channing shall take place, it shall occur at the McDonald's restaurant . . . in Boone, Iowa." Finally, the court increased Scott's child support obligation to $633 based on its finding that Scott had earned nearly $60,000 in the past year for the work he performed for his mother.

Scott appeals. He claims the district court erred in (1) modifying his child support obligation; (2) restricting his visitation with Channing; and (3) failing to require the parties to share equally in the transportation expenses for visitation.

II. Scope and Standards of Review.

Our review is de novo in this equity case. Iowa R. App. P. 6.907 (2009). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. 6.904(3)(*g*); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005).

III. Discussion.

A. Child Support.

Scott argues the district court erred in modifying his child support obligation because the court (1) incorrectly calculated his net monthly income; (2) improperly imputed income to him; (3) failed to average his income over a reasonable period of time; and (4) included the "loans" he received from his mother as income. All of these arguments are simply variations of Scott's primary contention, which is that the court erred in considering the substantial amount of money he received from his mother in modifying his child support obligation. We conclude otherwise.

Iowa Code section 598.21C(1)(a) and (b) (2007) provides that the district court may modify child support orders when there is a substantial change in circumstances upon considering, among other things, changes in the "employment, earning capacity, income, or resources of a party" or receipt by a

party "of an inheritance, pension, or other gift." The statute additionally provides that a "substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines." Iowa Code § 598.21C(2)(a). Thus, in determining child support, "the court must first look to the child support guidelines." *In re Marriage of Hilmo*, 623 N.W.2d 809, 811 (Iowa 2001). A rebuttable presumption exists that "the amount of child support which would result from the application of the guidelines . . . is the correct amount of child support to be awarded." Iowa Code § 598.21B(2)(c); Iowa Ct. R. 9.4.

The guidelines establish the amount of child support by determining the "net monthly income" of each parent derived from their "gross monthly income." *See Markey v. Carney*, 705 N.W.2d 13, 19 (Iowa 2005); Iowa Ct. R. 9.5 (stating net monthly income is gross monthly income minus applicable deductions). "Gross monthly income" is not defined in the guidelines, but our courts have on a number of occasions included such items as overtime, incentive pay, bonuses, commission, and corporate distributions to shareholders. *See Markey*, 705 N.W.2d at 19 (stating all income that is not anomalous, uncertain, or speculative should be included as income when determining child support); *In re Marriage of Lee*, 486 N.W.2d 302, 305 (Iowa 1992) ("The guidelines do not limit the definition of gross income to that income reportable for federal income tax purposes.").

Because gross monthly income is not specifically defined in the guidelines, we look first to the common meaning of the word. *Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 548 (Iowa 2002). "Income" has

traditionally been defined as "'a gain or recurrent benefit that is usually measured in money and for a given period of time, derives from capital, labor, or a combination of both.'" *In re Marriage of Alter*, 89 Cal. Rptr. 3d 849, 861 (Cal. Ct. App. 2009) (quoting Webster's Third New Int'l Dictionary 1143 (1993)); *see also* Black's Law Dictionary 778 (8th ed. 2004) (defining income as "[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts, and the like"). With those definitions in mind, we believe the district court correctly considered the money Scott received from his mother as income in applying our child support guidelines.

The following exchange between Scott and Camille's attorney on cross-examination is illuminating:

> Q. Is there any type of work that you can do now? A. Yes. I still do consulting for my mother on the land development and the family business, and I spend a lot of time doing that.
>
> Q. Are you qualified to do any type of work that would result in an income? A. Well, yes. *The work that I do is what provides our living.*
>
> Q. So your mother pays you money for working for her? A. No. I handle the meetings, the engineering, planning and zoning, city engineering, go to city council meetings. *I do all of that and also sit on the board; and in return, she pays for whatever expenses that I have when I don't have an income.*

(Emphasis added.) He later testified: "Well, I don't just take money from her. I pretty much run the family business for my mother; and in return, she pays for these things."

It is clear from this testimony Scott received money from his mother in exchange for the work he performed for her, effectively making her his employer. *See In re Marriage of Schulze*, 70 Cal. Rptr. 2d 488, 495 (Cal. Ct. App. 1997) (determining value of a car and condo a father received from his parents, whom

he was employed by, was includable as income for child support purposes because those items were provided to him as employee benefits). These payments were regular and recurring, contrary to Scott's arguments otherwise. *See Alter*, 89 Cal. Rptr. 3d at 863 (determining recurring gifts of money a child support obligee received from his mother were properly considered as income due in part to the "periodic and regular nature of the payments"); *see also Markey*, 705 N.W.2d at 19 (stating the key in determining whether certain items should be included as income focuses on whether it is "reasonably expected to be received in the future"). Scott's mother testified at the trial that "[u]ntil business picks up, I'll keep providing for him. . . . We've been involved in this probably for the last eight to ten years, seven years." She stated there was no limit on the amount of money she was willing to provide to him, agreeing that if he "needs money, [she] give[s] it to him."

We agree with the district court that this money was not a loan to Scott despite Scott's and his mother's testimony to the contrary. *See Mosebach v. Blythe*, 282 N.W.2d 755, 760 (Iowa Ct. App. 1979) ("To constitute a loan, there must be a lender, a borrower, and a contract between the parties."). "The true intention of those participating in a monetary transaction is of crucial importance in determining what relationship their conduct gave rise to." *Id.* at 760-61. As the district court found, "There is no credible evidence (such as promissory notes) that [Scott's mother] expects Scott to repay these 'loans.'" *See In re Marriage of Rogers*, 820 N.E.2d 386, 392 (Ill. 2004) (determining sums given to a father by his parents were "loans in name only" because he "had never been required to repay any part of the substantial 'loans' given to him each year by his parents").

Scott's mother testified, "It's *kind of a loan*. It's just the way our family does things. If I can help his brother out, I help wherever they need it." (Emphasis added.) When asked if she keeps track of the money she gives to Scott, she replied, "I kind of ballpark it. I don't write it down."

> Q. Do you know how much money you've given him in the last year? A. Oh, fifty-five to sixty thousand maybe.
> Q. In the last year? A. Something like that.
> Q. And do you know how much the year before that? A. Nothing I don't think.
> . . . .
> Q. What kind of things do you pay for? A. I just allow him so much money, and he pays whatever he pays out of it. If it's—he needs something for the vehicles, the house payment, whatever. I don't make him give me an accounting for every penny he spends.

This equivocal testimony does not support a finding that the money Scott received from his mother was a loan. *Cf. In re Marriage of Vrban*, 359 N.W.2d 420, 427-28 (Iowa 1984) (finding money a spouse received from his parents was a loan where the word "loan" was written on the checks he received from his parents).

Nor can the money Scott's mother gave him be considered similar to contributions made by a parent's spouse or paramour, which "is not a consideration the district court must weigh in setting the child support award." *In re Marriage of Drury*, 475 N.W.2d 668, 672 (Iowa Ct. App. 1991). That principle is not applicable here because the money Scott receives from his mother is income he earns by working for her land development business. *Cf. State ex rel. Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994) (declining to consider money custodial parent received from her boyfriend for their joint household expenses in calculating child support); *In re Marriage of Will*, 602 N.W.2d 202,

206 (Iowa Ct. App. 1999) ("Income as defined by the child support guidelines does not include income of a current spouse."). Scott's argument that the court "sought to impose Scott's child support obligation on his mother to the extent possible" is similarly foreclosed due to the employment relationship between Scott and his mother.

In light of the foregoing, we conclude the district court did not err in including the money Scott received from his mother in the year preceding the trial in this matter as income in its child support calculation. *See, e.g.*, *Alter*, 89 Cal. Rptr. 3d at 862-63 (holding recurring, cash payments in predictable amounts from an obligor or obligee's parents may be considered income for child support purposes); *accord Rogers*, 820 N.E.2d at 390-92; *In re Marriage of Petersen*, 22 S.W.3d 760, 764-65 (Mo. Ct. App. 2000); *Barnier v. Wells*, 476 N.W.2d 795, 797 (Minn. Ct. App. 1991). We have considered Scott's remaining arguments regarding the modification of his child support obligation and find them to be without merit.

B. Visitation.

Scott next claims the "restrictions" placed on his visitation "are unduly restrictive, not in the best interest of the parties' minor child, and not necessary to prevent direct physical or emotional harm to the child." We do not agree.

The district court ordered that

> Scott shall not take Channing from the state of Iowa, or during the summer visitations from the state of South Dakota without the prior notification to Camille of where Channing will be, the address of the same, and a telephone number where he can be reached.

Scott argues that provision, in conjunction with the court's order that the parties exchange Channing in Boone, Iowa, "effectively means that Scott can never leave the state of Iowa with the child during his non-summer visitation." We do not read the provision in such a manner. We read it to mean that Scott must give Camille prior notification before taking Channing from Iowa during any visitation, and must give Camille prior notification before taking Channing from South Dakota during the summer visitations.

We fail to see how requiring Scott to inform Camille of Channing's whereabouts operates as a restriction on visitation. *Cf. In re Marriage of Fite*, 485 N.W.2d 662, 664 (Iowa 1992) (deleting conditions placed on father's visitation, which included abstinence from use of alcohol and use of profane, obscene, or abusive language during visitation); *In re Marriage of Walsh*, 451 N.W.2d 492, 493 (Iowa 1990) (deleting condition that the father could only exercise visitation when no unrelated adult was present); *In re Marriage of Ullerich*, 367 N.W.2d 297, 299-300 (Iowa Ct. App. 1985) (deleting condition restricting the mother from having unrelated adult males present in her residence when exercising visitation). This is especially so here, given the incident that occurred in February 2008 when Scott took Channing to South Dakota with the intent to keep him there in violation of the parties' dissolution decree. *See In re Marriage of Smith*, 471 N.W.2d 70, 73 (Iowa Ct. App. 1991) (approving a condition prohibiting a father from removing the children from the state of their residence during visitation where he had once failed to return the children after visitation). All of Channing's counselors opined that event was traumatic, confusing, and upsetting for him. *See In re Marriage of Rykhoek*, 525 N.W.2d 1,

5 (Iowa Ct. App. 1994) (concluding conditions may be placed on a parent's visitation rights "only when visitation without the placement of conditions is likely to result in direct physical harm or significant emotional harm to the child").

Furthermore, the parties had agreed in the past that Scott would provide Camille "with contact telephone numbers and . . . with the location of the child should [Scott] leave the state of South Dakota prior to leaving the state of South Dakota." *See id.* (stating a parent may agree to a condition on his or her visitation). They had also agreed to exchange Channing in Boone. The district court simply continued that arrangement in its order if the parties could not otherwise agree.

Finally, we reject Scott's argument regarding the district court's supposed division of transportation expenses. We first note the court's order does not address which party is responsible for transporting Channing to and from visits with Scott. It simply designates the exchange location as noted above. Moreover, the parties agreed in the November 2000 modification that Scott would be responsible for transporting Channing for visits. *See In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999) (enforcing parties' agreement that noncustodial parent would pay all transportation expenses associated with visitation). That provision has never been changed.[3] *See Hart v. Hart*, 239 Iowa 142, 149, 30 N.W.2d 748, 751 (1948) (stating that "[a]t least until modified," the provisions of a decree "constitute a final adjudication"). Nor did Scott request

[3] In fact, the June 2005 modification of Scott's summer visitation and child support specifically provided: "In all other respects the Decree of Dissolution entered December 7, 1999, and subsequently modified on November 22, 2000, including notice provisions involving summer visitation, shall remain in full force and effect." The September 2007 stipulated modification decree contained a similar provision.

that it be changed. *See In re Marriage of Okonkwo*, 525 N.W.2d 870, 872 (Iowa Ct. App. 1994) ("Matters not raised in the trial court will not be considered on appeal."). We therefore reject this assignment of error as well.

C. Appellate Attorney Fees.

Camille requests an award of appellate attorney fees. *See* Iowa Code § 598.36. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). In arriving at our decision, we consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id*. Applying these factors to the circumstances in this case, we award Camille $2500 in appellate attorney fees.

IV. Conclusion.

The district court's order modifying the child support and visitation provisions of the parties' dissolution decree is affirmed. Camille is awarded $2500 in appellate attorney fees.

AFFIRMED.