NEBRASKA SUPREME COURT

State on behalf of Fernando L. v. Rogelio L.

299 Neb. 329 (2018) · No. No. S-17-348 · Decided March 16, 2018

SUMMARY

The Nebraska Supreme Court reviewed a challenge to the denial of a downward modification of child support. The court affirmed the ruling concerning tax deductions but reversed and remanded because the lower court incorrectly treated children born before the existing support order as subsequent children under the Nebraska Child Support Guidelines.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	March 16, 2018
DOCKET	No. S-17-348
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rogelio L. appealed the Adams County District Court's dismissal of his complaint seeking a downward modification of his child support obligation.
STANDARD OF REVIEW	Modification of child support is reviewed de novo on the record, but the trial court's decision is affirmed absent an abuse of discretion. Interpretation of the Nebraska Child Support Guidelines is a question of law reviewed independently.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Rogelio L. v. State of Nebraska on behalf of the State of Indiana and Fernando L., a minor child

TOPICS

child support · family law procedure · statutory interpretation · appellate procedure · standard of review

PRACTICE AREAS

family law · child support · appellate procedure

QUESTIONS PRESENTED

1. Whether the district court incorrectly applied the Nebraska Child Support Guidelines by treating Rogelio's children born before the 2010 support order as children born subsequent to that order.
2. Whether the district court erred by refusing to deduct Rogelio's alleged tax liability from his income despite his failure to pay taxes or submit documentary proof.
3. Whether the district court was required to determine whether the child support obligation would reduce Rogelio's net income below the federal poverty guidelines.

HOLDINGS

1. The expression "subsequent children" in Neb. Ct. R. § 4-220 means children born after an existing child support order.
2. The district court abused its discretion by failing to analyze Rogelio's potential entitlement to a deduction for regular support of Sheryl, who was born before the 2010 support order and whose support was included in the original calculation.
3. The district court did not abuse its discretion by refusing to deduct taxes from Rogelio's income because he presented no tax returns or other documentary evidence of wages and admitted that he paid no taxes.
4. The court declined to decide whether the basic subsistence limitation required consideration because the child support calculation was being reversed and remanded on another ground.

KEY QUOTATIONS

> *“Based on our reading of § 4-220, we interpret the expression “subsequent children” to mean children born after an existing support order.”* (336)

> *“Rogelio presented the district court with limited evidence upon which to base its child support calculations, and Rogelio’s own testimony that he did not pay taxes supported the district court’s refusal to deduct them from his income.”* (338)

FACTUAL BACKGROUND

Fernando was born in 2004, and Rogelio's 2010 child support order included consideration of his obligation to support two other children, born in 2007 and 2009. One of those children died in 2012, and two additional children were born in 2014 and 2015. In 2016, Rogelio sought a downward modification, claiming reduced income and poverty-level circumstances; he testified that he earned $400 per week in cash and paid no taxes, and he submitted no tax returns, wage statements, or other documentary evidence of income.

PROCEDURAL HISTORY

In 2010, the district court established Rogelio's paternity of Fernando and ordered him to pay $388 per month in child support. Rogelio filed a 2016 complaint seeking modification based on alleged decreased income and poverty-level circumstances. A child support referee recommended reducing the obligation to $346 per month, but the district court sustained the State's calculations, dismissed the modification complaint, and declined to deduct taxes or provide credits for Rogelio's other children. The Nebraska Supreme Court affirmed the tax ruling but reversed and remanded the child-support calculation because the district court incorrectly treated all of Rogelio's younger children as born after the existing 2010 support order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Recalculate Rogelio's child support obligation based on the record, including the evidence received at the February 28, 2017, hearing, correctly accounting for the birth order of the children and Rogelio's support obligations under the 2010 order. The court may also consider the basic subsistence limitation after performing the corrected calculation.

CASES CITED

- Pearson v. Pearson, 285 Neb. 686, 828 N.W.2d 760 (2013)
- Schwarz v. Schwarz, 289 Neb. 960, 857 N.W.2d 802 (2015)
- State on behalf of B.M. v. Brian F., 288 Neb. 106, 846 N.W.2d 257 (2014)
- Wilkins v. Wilkins, 269 Neb. 937, 697 N.W.2d 280 (2005)
- Henderson v. Henderson, 264 Neb. 916, 653 N.W.2d 226 (2002)
- State on behalf of Andrew D. v. Bryan B., 22 Neb. Ct. App. 914, 864 N.W.2d 249 (2015)
- State on behalf of Lockwood v. Laue, 24 Neb. Ct. App. 909, 900 N.W.2d 582 (2017)
- In re Interest of Nicole M., 287 Neb. 685, 844 N.W.2d 65 (2014)
