No. A-24-819

IN THE NEBRASKA COURT OF APPEALS

State of Nebraska on behalf of
Paul B. Okeng and Nickolas A. Okeng,
Appellee-Plaintiff,
v.
Samuel Okeng,
Appellee-Defendant,
v.
Fannie B. Wotoe,
Appellant-Third Party Defendant.

On Appeal from the District Court of Lancaster County
The Honorable Matthew O. Mellor

BRIEF OF APPELLEE – PLAINTIFF

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Appellee-Plaintiff accepts Appellant's Statement of the Case as correct.

PROPOSITIONS OF LAW

I.

The award of child support is equitable in nature and will not be disturbed on appeal absent an abuse of discretion by the trial court. *Sylvis by and through Sylvis v. Walling*, 248 Neb. 168, 170, 532 N.W.2d 312, 314 (1995) (citing *Lancaster v. Brenneis*, 227 Neb. 371, 417 N.W.2d 767 (1988); *State on behalf of S.M. v. Oglesby*, 244 Neb. 880, 510 N.W.2d 53 (1994)).

II.

A trial court's determination of child support is reviewed de novo on the record to determine whether the trial court's judgments were so untenable as to have denied justice. *Lasu v. Issak*, 23 Neb.App. 83, 91, 868 N.W.2d 79, 87 (2015) (citing *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007)).

III.

Interpretation of the Nebraska Child Support Guidelines presents a question of law, and the appellate court is obligated to reach an independent conclusion. *Id.* (citing *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67); *Sellers v. Sellers*, 23 Neb.App. 219, 225-26, 869 N.W.2d 703, 710 (2015) (citing *Schwarz v. Schwarz*, 289 Neb. 960, 857 N.W.2d 802 (2015)).

IV.

A trial court may deviate from the Nebraska Child Support Guidelines, but absent a clearly articulated justification for the deviation, any deviation is an abuse of discretion. *Lasu v. Issak*, 23 Neb.App. at 94-95, 868 N.W.2d at 89 (citing *Pearson v. Pearson*, 285 Neb. 686, 828 N.W.2d 760 (2013); *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67)).

V.

An abuse of discretion results when a ruling is clearly untenable and unfair. *Sellers v. Sellers*, 23 Neb.App. at 225-26, 869 N.W.2d at 710 (citing *Schwarz v. Schwarz*, 289 Neb. 960, 857 N.W.2d 802)).

VI.

Plain error, which may be asserted for the first time on appeal, exists where there is an error plainly evident from the record, which prejudicially affects a substantial right of a litigant. *Osantowski v. Osantowski*, 298 Neb. 339, 362, 904 N.W.2d 251, 269 (2017) (citing *State v. Robbins*, 297 Neb. 503, 900 N.W.2d 745 (2017)).

VII.

Health insurance, when reasonably available, shall be provided by a minor child's parents. *State ex rel. Mayorga v. Martinez-Ibarra*, 281 Neb. 547, 550, 797 N.W.2d 222, 224 (2011) (citing *Neb.Rev.Stat.* § 42-369 (2)(a) (Cum.Supp. 2010)).

VIII.

A parent ordered to carry minor children on health insurance shall receive a credit against their share of monthly support for the premium paid. *Neb.Ct.R.* § 4-215(A) (2020).

IX.

The parent requesting an adjustment for health insurance premiums must submit proof of the cost, showing the cost to insure the

parent alone and the cost to add coverage for the children. *Noonan v. Noonan*, 261 Neb. 552, 565, 624 N.W.2d 314, 325 (2001) (citing *Rauch v. Rauch*, 256 Neb. 257, 590 N.W.2d 170 (1999)).

X.

Where a situation exists that is contrary to the principles of equity and which can be redressed within the scope of judicial action, a court of equity will devise a remedy to meet the situation. *Lizeth E. v. Roberto E.*, 317 Neb. 971, 981, 12 N.W.3d 809, 817 (2024) (citing *Yori v. Helms*, 307 Neb. 375, 949 N.W.2d 325 (2020)).

XI.

Courts of equity are bound by statutes and direct rules of law, but only when the rights of the parties are clearly defined and established by law. *Guy Dean's Lake Shore Marina, Inc. v. Ramey*, 246 Neb. 258, 264, 518 N.W.2d 129, 132 (1994) (citing *McCauley v. Stewart*, 177 Neb. 759, 131 N.W.2d 174 (1964); *In re Petition of Ritchie*, 155 Neb. 824, 828, 53 N.W.2d 753, 756 (1952)).

FACTS

On September 7, 2023, Appellee-Plaintiff filed a Complaint to Establish Support against Appellee-Defendant to establish child and medical support for two minor children: Paul Okeng, born in July of 2015, and Nickolas Okeng, born in October of 2019. (T 1-3). Paternity was resolved by signed acknowledgments of paternity for both children. *Id.* Upon service, Appellee-Defendant retained counsel, added Appellant as a party, and filed Answer and Counterclaim, requesting to address custody and parenting time in addition to child support. (T 8; 13-14; 24-25; 28-31). Appellee-Defendant filed a Motion for Temporary Orders, which was heard by the District Court on December 7, 2023 with all parties present. (T 46-48; 176). On December 8, 2023, the District Court entered a Temporary Order awarding joint legal and physical custody of the minor children and

ordering Appellee-Defendant to pay $122.00 in child support to Appellant for both minor children. (T 55-67).

Appellant retained counsel and filed a Motion for Further Temporary Orders and Motion to Vacate Previous Order, arguing she should have primary physical custody during the pendency of the case, the child support calculation did not account for all Appellee-Defendant's income, and service was improper. (T 71-77). Appellee-Defendant filed an Objection. (T 78-80). Prior to hearing on her Motions, Appellant filed a Voluntary Appearance and Answer and Counterclaim. (T 81-87). The District Court heard Appellant's Motions and Appellee-Defendant's Objection on January 26, 2024, and took the matter under advisement. (T 176-177). On January 30, 2024, the District Court entered a new Temporary Order adopting Appellant's proposed parenting plan but otherwise denying the Motion to Vacate. (T 88-94).

Trial occurred on August 20, 2024. (T 111-114; 142). At trial, the following evidence was adduced regarding child support and health insurance (Appellee-Plaintiff takes no position on custody or parenting time, so facts specific to those issues are not included). Appellee-Defendant and his partner, Aketch Oloya, share two children and reside together as an intact family. (23:4-18; 48:10-12). Ms. Oloya makes $39.00 per hour as a registered nurse. (22:15-22). Appellee-Defendant is employed at Molex LLC making $28.00 per hour with a supervisor differential of $1.75 per hour, working some overtime hours. (49:18-50:4). The overtime hours are not consistent or guaranteed. (50:9-12). Appellee-Defendant is also enrolled in the Army National Guard. (50:13-17).

Appellee-Defendant's 2023 W-2 from the National Guard showed an income of $5,597.76, with $335.87 being a contribution to retirement. (E5, p. 1). Appellee-Defendant's total income for 2024 from the Army National Guard will likely be lower than 2023 due to paternity leave. (60:14-18). Appellee-Defendant was unsure if he would be reenlisting in 2025. (148:6-12). A 2023 W-2 for Appellee-Defendant's employment at Molex LLC showed an income of

$64,728.77, with $5,537.45 being a contribution to retirement. (E.8, p. 1-2). Paystubs show deductions for dental and vision insurance, but do not specify if this includes coverage for the children. (E10, p. 1). Appellee-Defendant provides health insurance for himself and for three of his children as of the time of trial (the two children addressed in this action, plus a child he shares with Ms. Oloya) and believes he will continue to be able to do so. (84:2-6; 85:24-86:3; 109:3-14). Health insurance information provided by Appellee-Defendant's employer (Molex) toward the end of 2023 showed a biweekly cost of $103.00 for himself and $157.00 for himself plus children. (E 39, p. 7). There is no difference in premium cost for the "employee plus children" plan based on number of children. *Id.*

Appellant has a son in her household whose father resides in Texas making $15.00 per hour. (174:16-21; 233:1-3). Appellant works as a nurse and recently graduated with a licensed practical nurse degree, though she is unsure if the new degree will affect her income. (177:5-9; 238:25-239:9; 241:3-5). Paystubs show Appellant earns approximately $18.50 per hour, with an increase to $27.75 per hour for overtime pay and $37.00 per hour for holiday overtime pay. (E4, p. 1-3). Appellant has been working overtime to afford her attorney's fees, but it is not her intention to continue once the case is resolved, though it is something she can pick up when needed. (178:1-17; 240:9-15). Her 2023 tax return shows a gross income of $40,305.00 for the year. (E5, p. 1). Appellant testified she contributes to retirement, with paystubs showing roughly 3% of her income goes to a "Simple IRA". (233:25-234:2; E4, p. 1-3). Appellant has the children enrolled in Medicaid and requested she be ordered to carry the children on health insurance. (86:24-25; 232:9-11). Her paystubs include dental and vision insurance, but it is unclear if this coverage includes the children. (E4, p. 1-3).

The District Court entered a Decree of Paternity, Custody, and Support on September 12, 2024 wherein it awarded the parents joint legal and physical custody, ordered Appellee-Defendant to carry the minor children on health insurance, and ordered Appellant to pay child support in the amount of $163.00 per month when there were two or

one minor children, among other findings. (T 142-162). On September 18, 2024, Appellant filed a Motion to Alter or Amend, requesting to readdress custody, a right of first refusal provision, child support, and out-of-pocket medical expenses. (T 163-166). After hearing on September 27, 2024, the District Court entered an Order on October 4, 2024, overruling the Motion as to custody, the right of first refusal provision, and out-of-pocket medical expenses, but recalculating child support and ordering Appellant to pay $150.00 per month when there are two minor children and $94.00 per month when there is one minor child. (T 167-175).

On November 1, 2024, Appellant filed her appeal. Appellant assigns errors to the District Court awarding joint custody and equal parenting time, ordering Appellant to pay child support, and crediting Appellee-Defendant with health insurance premium costs for the minor children. Appellant does not raise issues on appeal with any of the numbers contained in the October 4, 2024, child support calculation other than the health insurance credit for the minor children. Appellant also does not appeal the Court's order that Appellee-Defendant carry health insurance for the minor children.

SUMMARY OF THE ARGUMENT

Appellee-Plaintiff does not take a position as to Appellant's arguments regarding custody and parenting time. Appellee-Plaintiff agrees with Appellant that the District Court erred in ordering Appellant to pay child support. The child support calculation attached to the October 4, 2024 Order resulted in Appellee-Defendant owing for child support and it appears to have been an error by the District Court to order the reverse. The District Court did not, however, abuse its discretion or commit error when crediting Appellee-Defendant for health insurance premiums paid for the minor children as it was within its discretion to do so and resulted in an equitable credit. The Nebraska Child Support Guidelines do not specify how health insurance credit is to be addressed when a parent has a second family on the same plan. Therefore, it was appropriate for the District Court

to resolve the issue equitably by dividing the credit so that Appellee-Defendant receives some credit for carrying the children subject to the action but does not receive excessive credit for a child that is not Appellant's.

ARGUMENT

I. THE DISTRICT COURT ERRED IN ORDERING APPELLANT TO PAY CHILD SUPPORT.

The award of child support is equitable in nature and will not be disturbed on appeal in the absence of an abuse of discretion by the trial court. *Sylvis by and through Sylvis v. Walling*, 248 Neb. 168, 170, 532 N.W.2d 312, 314 (1995) (citing *Lancaster v. Brenneis*, 227 Neb. 371, 417 N.W.2d 767 (1988); *State on behalf of S.M. v. Oglesby*, 244 Neb. 880, 510 N.W.2d 53 (1994)). A trial court's determination of child support is reviewed de novo on the record to determine whether the judgment was so untenable as to have denied justice. *Lasu v. Issak*, 23 Neb.App. 83, 91, 868 N.W.2d 79, 87 (2015) (citing *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007)). Interpretation of the Nebraska Child Support Guidelines presents a question of law, and the appellate court is obligated to reach an independent conclusion. *Id.* A trial court may deviate from the application of the Guidelines. *Id.* at 94, 868 N.W.2d at 89 (citing *Pearson v. Pearson*, 285 Neb. 686, 828 N.W.2d 760 (2013)). Absent a clearly articulated justification for the deviation, any deviation is an abuse of discretion. *Id.* at 94-95 (citing *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67)). Plain error, which may be asserted for the first time on appeal, exists where there is an error plainly evident from the record, which prejudicially affects a substantial right of a litigant. *Osantowski v. Osantowski*, 298 Neb. 339, 362, 904 N.W.2d 251, 269 (2017) (citing *State v. Robbins*, 297 Neb. 503, 900 N.W.2d 745 (2017)).

In its Order issued October 4, 2024, the District Court utilized a child support calculation prepared by Appellee-Plaintiff. (T 167-175). On the final pages of said calculation, Line 15.a. states that "Samuel Okeng" (Appellee-Defendant) owes for basic support. (T 173-174). Line

15.b. states that "Fannie Wotoe" (Appellant) owes for health insurance. *Id.* Line 16 states that the "Total Support Owed by *Samuel Okeng* (rounded)" is $150.00 when there are two minor children and $94.00 when there is one minor child. *Id.* (emphasis added). The October 4, 2024 Order, however, states Appellant is ordered to pay $150 per month for two children and $94 per month for one child. (T 167). This appears to be plain error as the calculation results in Appellee-Defendant owing a child support obligation. (T 169-174).

There is no explanation in the October Order for the reassignment of Appellee-Defendant's obligation to Appellant. Therefore, if it was intended as a deviation, it is an abuse of discretion. *Lasu v. Issak*, 23 Neb.App. at 94, 868 N.W.2d at 89 (citing *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67). It seems more likely, given the Court's original September 12th Order contained a calculation resulting in Appellant owing for child support, the Court still attributed a child support obligation to Appellant. (T 142-162). There were several changes between the two child support calculations that resulted in the change in who owes for child support. Most notably, the second calculation gives less credit to Appellee-Defendant for the children's health insurance premium cost and support for other children and gives Appellant credit for the other minor child in her household. (T 158-161; 169-174). A judicial abuse of discretion does not have to result from improper motive, bad faith, or intentional wrongdoing by a judge, but can occur just when the ruling is untenable and unjust. *Wachtel by and through Wachtel v. Beer*, 229 Neb. 392, 405, 427 N.W.2d 56, 64 (1988) (citing *Newton v. Brown*, 222 Neb. 605, 386 N.W.2d 424 (1986); *Bump v. Firemens Ins. Co.*, 221 Neb. 678, 380 N.W.2d 268 (1986)). The District Court was simply mistaken in believing the parent owing child support would still be Appellant.

Ordering Appellant to pay child support in its final Order was an error by the trial court, plainly evident from the record. The Order of the District Court from October 4, 2024 should be reversed and remanded to the District Court with instructions to enter an Order finding Appellee-Defendant to owe a child support obligation in the

amounts of $150.00 per month for two minor children and $94.00 per month for one minor child, consistent with the child support calculation attached to the October Order.

II. THE DISTRICT COURT NEITHER ABUSED ITS DISCRETION NOR ERRED IN CREDITING APPELLEE-DEFENDANT FOR A PORTION OF THE HEALTH INSURANCE PREMIUM PAID ON BEHALF OF THE MINOR CHILDREN.

As stated previously, the award of child support is equitable in nature and the trial court's award of child support will not be disturbed absent an abuse of discretion. *Sylvis by and through Sylvis v. Walling*, 248 Neb. at 170, 532 N.W.2d at 314 (citing *Lancaster v. Brenneis*, 227 Neb. 371, 417 N.W.2d 767; *State on behalf of S.M. v. Oglesby*, 244 Neb. 880, 510 N.W.2d 53)). An abuse of discretion results when a ruling is clearly untenable and unfair. *Sellers v. Sellers*, 23 Neb.App. 219, 225-26, 869 N.W.2d 703, 710 (2015) (citing *Schwarz v. Schwarz*, 289 Neb. 960, 857 N.W.2d 802 (2015)). Interpretation of the Nebraska Child Support Guidelines presents a question of law, and an appellate court must resolve it independently of the lower court's decision. *Id.*

Health insurance, when reasonably available, shall be provided by a minor child's parents. *State ex rel. Mayorga v. Martinez-Ibarra*, 281 Neb. 547, 550, 797 N.W.2d 222, 224 (2011) (citing *Neb.Rev.Stat.* § 42-369(2)(a) (Cum.Supp.2010)). A parent ordered to carry minor children on health insurance is entitled to receive a credit against their share of monthly support for the premium paid. *Neb.Ct.R.* § 4-215(A) (2020). The increased cost of health insurance for the children is added to the total monthly support number, then prorated between the parents to determine their share of support. *Id.* Generally, this results in a lower percentage of the child support obligation being assigned to the parent carrying the children on health insurance. The parent requesting an adjustment for health insurance premiums must submit proof of the cost to insure the parent alone and the cost to add coverage for the children. *Noonan v. Noonan*, 261 Neb. 552, 565, 624 N.W.2d

314, 325 (2001) (citing *Rauch v. Rauch*, 256 Neb. 257, 590 N.W.2d 170 (1999)). There must be an increase in cost for coverage of the children over the cost to insure the parent alone to receive a credit, which lowers a parent's share of the child support obligation. *Lucero v. Lucero*, 16 Neb.App. 706, 715-16, 750 N.W.2d 377, 385 (2008) (citing *Noonan v. Noonan*, 261 Neb. 552, 624 N.W.2d 314)).

Appellant makes two arguments against Appellee-Defendant receiving credit for health insurance carried for the benefit of the minor children. First, Appellant argues Appellee-Defendant cannot receive credit when he did not present proof he was carrying the minor children on health insurance at the time of trial. (Appellant's Brief, p. 22). Second, she argues because he has another minor child not involved in this action on the insurance, and the cost to carry one child is the same as the cost to carry three children, there is no "increased cost" under *Neb.Ct.R.* § 4-215(A) warranting credit. (Appellant's Brief, p. 23). Neither argument has merit. The District Court did not err or abuse its discretion in giving Appellee-Defendant credit for health insurance premiums for the children.

Regarding Appellant's first argument, she states the documents entered into evidence did not show Appellee-Defendant had coverage for the minor children at the time of trial and thus, he could not meet his burden under *Neb.Ct.R.* § 4-215(A). (Appellant's Brief, p. 22). This interprets *Neb.Ct.R.* § 4-215(A) to have a burden of proof that does not exist. *Neb.Ct.R.* § 4-215(A) does not limit the court to only ordering health insurance when a parent can show they already carry it for the child. *Neb.Ct.R.* § 4-215(A) instead states proof of the "cost of the health insurance coverage of the child(ren)" must be submitted, not proof the children are already covered. Similarly, there is no limitation requiring a parent to enroll the children in health insurance prior to the court crediting them for the cost. *Neb.Ct.R.* § 4-215(A) states: "The parent paying the premium receives a credit against his or her share of the monthly support." This should not be read to mean they must be actively paying the premium at the time the order is entered to receive the credit. There is no specification on when the payments of the

premium must start for credit to be appropriate. Requiring the parent to already have the child enrolled in health insurance at the time of trial to qualify for a credit is burdensome, inequitable, and sometimes, an impossible demand.

Parents do not always have their children enrolled in their health insurance plan prior to court order and often, could not get them enrolled before final hearing due to open enrollment period restrictions set by insurers. This is evident from *Neb.Rev.Stat.* § 44-3,146(a) (2002), which states a court order requiring a parent carry health insurance for a minor child must be followed by insurers "without regard to any enrollment season restriction." The Legislature had to address the open enrollment restrictions for parents who had not already carried children on insurance but were then ordered to do so by the court. If the Legislature intended for health insurance to only be ordered (and credit for premiums only given) when the parent already had the children enrolled prior to court action or trial, this statute would be unnecessary. While the Nebraska Child Support Guidelines are rules of the Supreme Court, they are a result of legislative action, and the Supreme Court would not write them to thwart legislative intent. *Neb.Rev.Stat.* § 42-364.16 (Reissue 1998). Limiting the credit as Appellant suggests also impedes the goal of *Neb.Ct.R.* § 4-215(A) and *Neb.Rev.Stat.* § 42-369(2)(a) to ensure that children in the state of Nebraska have health insurance. A credit against their child support obligation incentivizes noncustodial parents to provide information regarding availability of health insurance through employment, where the court may otherwise have ordered cash medical support or issued a finding that health insurance was not available.

If health insurance for the minor children can be ordered prior to the parent carrying it, the parent must also be entitled to a reduction in their child support based on the premium cost, even if they are not yet paying the premium. If a parent is ordered to carry health insurance, then under *Neb.Ct.R.* § 4-215(A), "[t]he increased cost to the parent for health insurance for the child(ren) *shall* be

prorated between the parents". (emphasis added). The parent need only provide proof of the cost breakdown, not proof they have the children enrolled at the time of the order. *See Sallae v. Omar*, No. A-21-117, 2021 WL 4057720 (Neb.App. Sept. 7, 2021), *not designated for permanent publication* (holding that granting credit for health insurance not beginning until a month after modification trial was not an abuse of discretion); *State o/b/o Samantha S. v. Kernes*, No. A-95-1262, 1997 WL 412505 (May 20, 1997), *not designated for permanent publication* (holding district court abused its discretion in ordering parent to carry health insurance without factoring in costs when calculating child support obligation because parent did not actually pay for the insurance at time of hearing). Appellee-Defendant showed the cost breakdown of the premium for himself and for himself plus children and testified he would be willing and able to continue carrying the children on insurance. (E 39, p. 7; 85:20-86:3). Appellee-Defendant met his burden to show he was entitled to credit for health insurance premiums for the minor children if court ordered to carry said insurance, with the appropriate amount of credit to be determined by the District Court.

Appellant's second argument is Appellee-Defendant should receive $0.00 in credit because there is no difference between the cost of insuring one child versus insuring three children. (Appellant's Brief, p. 23). Appellant states Nebraska appellate courts have "repeatedly" found health insurance credit to only be appropriate when there is an increase in premium cost for "those specific children." *Id.* Appellant primarily relies on *Rauch v. Rauch*, 256 Neb. 257, 590 N.W.2d 170, and *State on behalf of Dustin W. v. Trevor O.*, No. A-23-311, 2024 WL 1402449 (Neb.App. Apr. 2, 2024), review denied, Jun. 13, 2024, *not designated for permanent publication*. Respectfully, *Rauch* and *Dustin W.* can be distinguished from the present case and are not persuasive on this issue.

In *Rauch*, a father argued for a health insurance credit, but the Nebraska Supreme Court found he did not meet his burden of proof to justify the deduction and so there was no abuse in discretion in not

giving it. 256 Neb. at 264, 590 N.W.2d at 176. The father testified the premium for his family, which also covered his wife and another child in addition to the children at issue, was $400 per month and he "pays his current wife $300 per month to compensate for the insurance cost for [the two minor children in the case]." *Id.* at 265, 590 N.W.2d at 176. He asked for this $300 amount as a deduction. The court did order him to carry health insurance for the two minor children, but it did not give him any credit toward the children's premium cost.

The Supreme Court specifically found the father "did not establish that the $300 per month actually reflected the cost of insuring" the minor children and therefore, "presented no information by which the district court could have found he was entitled" to a $300 deduction. *Id.* The Supreme Court does not say parents are never entitled to health insurance credit because they have other family members on the same plan. Instead, the Court finds the father did not adequately prove how $300 represented the two children's share of a $400 premium (that covered five people). He also did not provide documentation to show what the cost would be for himself versus what the cost would be for the children alone. *See State on behalf of Andrew D. v. Bryan B.*, 22 Neb.App. 914, 921, 864 N.W.2d 249, 255 (2015) (finding that a parent's testimony of approximate cost of premium is not enough "proof" for purposes of credit); *Gress v. Gress*, 274 Neb. at 698, 743 N.W.2d at 78 ("[T]he propriety of child support obligations should not be based on costs that are entirely speculative."). The Supreme Court in *Noonan v. Noonan* later identified this as the main issue with giving health insurance credit in *Rauch. Noonan v. Noonan*, 261 Neb. at 565, 624 N.W.2d at 325. ("In *Rauch*, we held that the parent claiming a deduction for health insurance must show that he or she has incurred an increased cost to maintain the coverage for the children *over what it would cost to insure himself or herself."* (emphasis added)). The *Rauch* Court affirmed because the requesting parent did not actually prove they were entitled to the $300 amount, not because they could never be entitled to it due to having other family members on the insurance.

In the present case, Appellee-Defendant provided documentation showing the breakdown of health insurance costs for himself and for himself plus the children, allowing the court to determine an amount attributable to the children alone. (E 39). The October 4, 2024 calculation divided the cost between the three children Appellee-Defendant was insuring to determine cost per child, then provides Appellee-Defendant credit for the two children he shares with Appellant. (T 169-174). There was enough "proof" for the District Court to determine the figure used in the calculation was an appropriate reflection of what amount of the premium should be attributed to the two minor children Appellee-Defendant and Appellant share. The concerns of the Supreme Court in *Rauch* are not present in this case and therefore, *Rauch* is not persuasive when determining appropriate credit for the children's health insurance.

Dustin W. can also be distinguished from the present case. In *Dustin W.*, a mother argued the district court erred in not giving a deduction for children's health insurance premiums paid by her new husband. A-23-311, 2024 WL 1402449 at *13-14. The Nebraska Court of Appeals notes that under *Neb.Ct.R.* § 4-215(A), "the parent paying the premium" receives the credit and, in *Dustin W.*, the parent requesting the deduction is not who pays the premium as it is paid by a third party (her husband). *Id.* While the Court of Appeals does specify there is no increased cost to cover the child due to other children already being covered by the insurance, this is not the basis of its holding. Instead, the *Dustin W.* Court specifically finds the mother "failed to establish that *she* paid the insurance premium for which she requests a credit," and therefore, the district court did not abuse its discretion in not crediting her with the costs. *Id.* at *14. (emphasis added). In the present case, no party presented evidence indicating anyone other than Appellee-Defendant would be paying for the health insurance premiums related to his employer-provided insurance, so *Dustin W.* does not apply.

Neb.Ct.R. § 4-215 does not provide any specific rule on how second families covered by the same insurance should be addressed.

For guidance, there are persuasive opinions from the Nebraska Court of Appeals wherein the issue of second families and health insurance credits was addressed. While not precedential, they are useful when analyzing if there was an abuse of discretion or error in this case. *Neb.Ct.R.App.P.* § 102(E)(4)-(5) (2022).

In *Ruhge v. Schwede*, a father argues he was entitled to credit for family insurance, which also covered his new wife and other child. *Ruhge v. Schwede*, A-11-714, 2012 WL 882511 at *4 (Neb.App. Mar. 13, 2012), *not designated for permanent publication*. The father testified the cost of his individual coverage is $360.71 per month and the cost of family coverage is $843.42 per month and claimed he should be given credit for the child at issue in the amount of $482.71 per month (the difference between the individual and family costs). *Id.* The *Ruhge* Court notes without the minor child on the plan, the father's costs would remain the same to continue covering his wife and other child. *Id.* The Court then finds the father cannot "show that any portion of the increase between individual coverage and family coverage can be attributed to [the minor child]" and so there was no abuse of discretion when the trial court did not give him credit. *Id.*

The present case can be distinguished from *Ruhge*. First, the father in *Ruhge* is requesting a deduction based on the payment of a family health insurance plan, which generally costs more than a plan only adding children. Credit for family plans should be held to higher scrutiny as it is, generally, a significantly higher credit. In the present case, as an example, family insurance would cost Appellee-Defendant nearly double the cost of a plan for himself plus the children (after converting the biweekly cost to monthly cost: $660.83 per month for family versus $340.16 per month for "You+Children"). (E 39, p. 7). It may have been an abuse of discretion for the District Court to give Appellee-Defendant a family-priced credit when the credit should only address two children, but it did not.

The second way *Ruhge* is distinguishable is there was no equitable accounting to explain why the father should receive the entirety of the family credit. Family coverage presumably covers

himself plus his wife and two children (one of the action and one with his wife). It costs $843.42 per month and the father requested credit in the amount of $482.71 per month for one minor child, which amounts to over half of the entire premium cost. *Ruhge v. Schwede*, A-11-714, 2012 WL 882511 at *4. He offers no justification for why one child should be calculated to cost over half of the premium. Additionally, the Court of Appeals notes the father previously received credit in the amount of $128 per month for the one minor child's health insurance prior to the modification of the order. *Id.* The father provides no explanation as to why the credit should more than triple ($128.00 to $482.71). Indeed, it is likely most of the increase could be attributed to transitioning to a family plan to accommodate the new wife and child. The district court found it was not equitable to give him the entire difference between individual and family cost for a credit. Perhaps, had he divided the $482.71 per month between the three people it covered, the more equitable credit of $160.90 may have been ordered.

In the present case, the calculation used by the District Court takes the difference between the individual plan cost and the cost for the employee plus children (not the family plan) and gives two-thirds of the credit to account for the two of the three children covered that are subject to the case. (T 169-174). The amount credited is appropriate based on the evidence presented and the equities balanced by the Court. Had the Court ordered the difference between Appellee-Defendant's insurance costs and the cost of the family plan, as the father in *Ruhge* requested, it would result in a credit of $437.67 per month, more than the total monthly amount for him and the children. This would have been an abuse of discretion under the reasoning of the *Ruhge* Court. Instead, the District Court determined an equitable amount, giving Appellee-Defendant some credit for the increased cost to cover children, but acknowledging the health insurance also covers a child who is not Appellant's.

Finally, *Ruhge* can be distinguished because it was a modification case where the father had already been ordered to carry health insurance for the minor child and had carried the child on

insurance for several years, previously receiving a credit of $128 per month. *Ruhge v. Schwede,* A-11-714, 2012 WL 882511 at *4. Not giving the much higher credit did not change the father's circumstances as he would be carrying the family insurance regardless of the court order for his second family (there is no evidence cited indicating health insurance was otherwise available to the family which they could have been using as an alternative). *Id.* He already had the child enrolled and would not be paying any more to continue carrying health insurance for the child. Continuing to order the father to carry the minor child in the action on insurance was not against the interests of justice, but it would be an injustice to significantly reduce his child support obligation based on a credit he would be paying regardless of the court order for his second family. The *Ruhge* Court does not go so far as to find the father should never receive a credit in his circumstances. Instead, it finds the amount he requested is not reflective of an increase between individual and family coverage attributable to one child and there would be no inequity in continuing to order him to carry the child on health insurance without giving him the credit since he would carry the family insurance either way.

In the present case, Appellee-Defendant was not carrying insurance for any of his children prior to the months directly before trial. Even at time of trial, one of his other children was enrolled in health insurance through his partner. (108:16-109:14). While Appellee-Defendant may have enrolled the children in his health insurance without court involvement, it is unlikely as Appellant desired the children remain on Medicaid. (87:18-25; 231:20-22; 232:9-11). Unlike in *Ruhge*, Appellee-Defendant's out-of-pocket costs for health insurance premiums were directly changing as a result of the court action. He just happened to add another child to the health insurance plan. Appellant would possibly have an argument under *Ruhge* if Appellee-Defendant had his second family already on insurance prior to any court filings and it would cost nothing to add these two children, but he did not. If not for Appellee-Plaintiff's filing, it is possible Appellee-Defendant's other child would have been enrolled in his partner's

health insurance, and he would not be paying any health insurance premiums for any of the children. There is a new order of child support resulting in an increase in Appellee-Defendant's costs for health insurance premiums, so it can be distinguished from *Ruhge*.

The Nebraska Court of Appeals had also addressed a similar situation in *Grebin v. Grebin*. A-09-131, 2009 WL 6472977 (Neb.App. Dec. 8, 2009), *not designated for permanent publication*. A father appealed the denial of a health insurance credit in a modification case where he had previously been ordered to carry health insurance for a minor child. *Id.* at *4. The father requested a credit amounting to the entire cost of the family plan premium. The Court notes "the $250 additional premium covers Jeffrey's second family, and, as such, if Rafe is not covered under Jeffrey's policy, there would be no reduction in the premium." *Id.* The Court of Appeals determined it is not an abuse of discretion to not give credit in a modification case where the parent was already ordered to carry health insurance, is already carrying a second family on a family insurance plan, and there is no increased cost to carry the child subject to the appeal. For the same reasons the present case can be distinguished from *Ruhge*, it can be distinguished from *Grebin*.

The final case addressing health insurance credits and second families is *Eicke v. Eicke*, which is most persuasive against finding an abuse of discretion in ordering credit in the present case. *Eicke v. Eicke*, No. A-20-081, 2021 WL 1186214 (Neb.App. Mar. 30, 2021), *not designated for permanent publication*. In *Eicke*, a father appeals (among other issues raised with the trial court's child support calculation) the mother receiving credit for health insurance where the mother was enrolling their three children in a family plan that also would include two children not subject to the appeal. *Id.* at *7. The father argues the mother should receive three-fifths of the family credit "to reflect the number of children of the marriage enrolled in the plan as compared to the total number of children covered." *Id.* The mother argued she should receive the full credit as it cost the same whether she had some or all her children covered. *Id.*

The Nebraska Court of Appeals agreed with the father. The Court acknowledged "one could easily argue that [the mother] should get no credit for the premium paid since she would have purchased the health insurance for her other two children in any event." *Id.* at *8. It then finds the father's proposal of three-fifths credit "strikes an appropriate balance." *Id.* The *Eicke* Court found it is appropriate to give both parents some amount of benefit; the mother receives a benefit for paying for health insurance premiums for the children and the father receives the benefit of not increasing his child support obligation due to health insurance premiums paid for children who are not his own. The Court of Appeals, in reaching an independent conclusion on the final child support obligation, uses the three-fifths figure suggested by the father in its calculation. *Id.* at *10, Appendix 1.

Eicke is analogous to the present case. It involves a parent being ordered to carry health insurance they were not already carrying prior to the proceedings. *Id.* at *8 ("[S]he *was going to* enroll in a family health insurance plan . . . .") (emphasis added). The health insurance premium cost stays the same regardless of the number of children. *Id.* ("Enrolling in this family health insurance plan would cost the same whether she enrolled with the three children from this relationship or without them."). Notably, *Eicke* was not just a determination of whether a lower court abused its discretion but required the Court of Appeals to recalculate child support and determine how much health insurance credit a parent with a second family would receive. The Nebraska Court of Appeals used the same method used by the District Court in the present case, dividing the credit based on the number of children involved in the case versus the number of children total carried on the health insurance. If appellate courts consistently found parents can only claim a deduction when cost changes based on the number of children covered, as implied in Appellant's brief, then it would not have used this division method in determining a new child support calculation in *Eicke*. (Appellant's Brief, p. 23). But it did. The Court of Appeals determined an equitable credit was more appropriate

than no credit at all, even if the cost was the same for three or five children.

Ultimately, child support and health insurance credits are matters of equity and district courts have broad discretion in equitable proceedings. "Where a situation exists that is contrary to the principles of equity and which can be redressed within the scope of judicial action, a court of equity will devise a remedy to meet the situation." *Lizeth E. v. Roberto E.*, 317 Neb. 971, 981, 12 N.W.3d 809, 817 (2024) (citing *Yori v. Helms*, 307 Neb. 375, 949 N.W.2d 325 (2020)). District courts can utilize legal or equitable remedies, whichever is appropriate for the case's specific facts and pleadings–though a court's equitable power does not allow them to circumvent statutory requirements and procedures. *Hopkins v. Washington County*, 56 Neb. 596, 77 N.W. 53, 54 (1898); *Jeffrey B. v. Amy L.*, 283 Neb. 940, 951, 814 N.W.2d 737, 746 (2012). Courts of equity are bound by statutes and rules of law governing the issue, but only when the rights of the parties are clearly defined and established by law. *Guy Dean's Lake Shore Marina, Inc. v. Ramey*, 246 Neb. 258, 264, 518 N.W.2d 129, 132 (1994) (citing *McCauley v. Stewart*, 177 Neb. 759, 131 N.W.2d 174 (1964); *In re Petition of Ritchie*, 155 Neb. 824, 828, 53 N.W.2d 753, 756 (1952)).

The Nebraska Child Support Guidelines do not explicitly address how second families impact health insurance credit, meaning credit involving second families is not a right clearly defined by law. *Neb.Ct.R.* § 4-215(A). Interpreting the lack of direction in the Guidelines to mean they never allow for credit when second families are involved would not be in the interests of justice. *See Adams v. Adams*, 156 Neb. 778, 789, 58 N.W.2d 172, 178 (1953) (finding the test of equity jurisdiction is the absence of an adequate remedy at law practicable and efficient to the ends of justice). District courts can overcome this lack of clear definition by applying equity principles to the specific circumstances of a case to determine an appropriate remedy. The Guidelines do not have to be applied with "blind rigidity." *Pool v. Pool*, 9 Neb.App. 453, 456, 613 N.W.2d 819, 822 (2000) (citing *Neb.Rev.Stat.* § 42-364.16).

In the present case, the District Court applied the Guidelines to determine Appellee-Defendant was entitled to a credit for health insurance premiums, but the Guidelines do not define how this credit must be calculated when another child is covered. Under its equity powers, the Court weighed the rights and interests of both parents and determined a credit should be given but adjusted. The District Court chose to utilize the division method found in *Eicke*, thereby creating a result fair to both parents. The amount used gives Appellee-Defendant credit for health insurance premiums he will be paying to benefit his and Appellant's children, but it does not give him so large of a deduction as to unfairly increase Appellant's share of the child support obligation for a child who is not her own. The District Court did not err or abuse its discretion in crediting Appellee-Defendant with two-thirds of the children's health insurance premium costs and this amount should be utilized if the matter of child support is remanded to the District Court to readdress who is ordered to pay support.

CONCLUSION

The District Court erred in ordering Appellant to pay child support when the calculation used resulted in Appellee-Defendant owing for child support. The District Court did not err or abuse its discretion when it gave Appellee-Defendant credit for two-thirds of the health insurance premiums paid on behalf of the minor children. The amount credited was based on evidence and results in an equitable outcome where both parents receive a benefit. While the final amount of child support will depend on the Appellate Court's ruling regarding custody, if there is no change to the District Court's custody finding, the matter of child support should be remanded back to the District Court with instructions to enter an Order finding Appellee-Defendant's child support obligation to be $150.00 per month for two minor children and $94.00 per month for one minor child.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this document contains 7,945 words, not including this certificate. This document was drafted using Microsoft Word for Microsoft 365 and said software was relied upon for word count. The final document was converted to PDF using Adobe PDFMaker 23 for Word. This document was prepared utilizing Century font at 12-point. Margins are set at 1.5 inches on all sides. Line spacing is set at 1.15, other than extra spacing as allowed before headings.

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Certificate of Service

I hereby certify that on Monday, March 10, 2025 I provided a true and correct copy of this *Brief of Appellee State* to the following:

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