IN THE COURT OF APPEALS OF IOWA

No. 0-070 / 09-1149
Filed February 24, 2010

IN RE THE MARRIAGE OF JILL A. IHNS
AND STEVEN C. IHNS

Upon the Petition of
JILL A. IHNS,
Petitioner-Appellee,

And Concerning
STEVEN C. IHNS,
Respondent-Appellant.

Appeal from the Iowa District Court for Cedar County, J. Hobart Darbyshire, Judge.

Steven Ihns appeals from the district court's order denying his second application to modify the child support provisions of the parties' dissolution decree. **AFFIRMED.**

Stephen Jackson, Cedar Rapids, for appellant.

Stuart Werling, Tipton, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

Steven Ihns appeals from the district court's order denying his second request to modify the child support provision of the parties' dissolution decree. Steven Ihns and Jill Ihns's marriage was dissolved in February 2005. The parties were granted joint legal custody of their two children (born 1992 and 1995), with Jill having physical care and Steven visitation. Steven was ordered to pay child support. At that time, Steven had worked for Alcoa since 1995 and had an annual income of $44,845.

In late 2005, Steven quit his job at Alcoa and took a position as public works director for the City of Stanwood, earning approximately $28,000 annually. In February 2006, Steven filed his first application to modify child support. Steven argued that his change in income was a substantial change in circumstances and requested his child support obligation be reduced. In October 2006, the district court found that Steven had voluntarily quit his job to take a lower paying job. Although Steven claimed this was due to a change in work shift, which was not conducive to spending time with the children, the district court found that this did not warrant Steven's voluntary termination of employment and therefore, denied his application. Steven did not appeal this ruling.

In May 2009, Steven filed his second application to modify his child support obligation. He again argued that his change in income was a substantial change in circumstances and requested his child support be reduced. On June 26, 2009, the district court found that the court in the 2006 proceedings had found that Steven's reduction in income was self-inflicted and not sufficient to

serve as the basis for reducing his child support obligation. Further, there had been no changes of circumstances since the last modification hearing.[1] Because there was no evidence demonstrating a substantial change in circumstances since the first modification proceeding, the district court denied Steven's application.

Our review is de novo. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006). Steven argues that the district court erred in finding he needed to show a substantial change in circumstances since the prior modification proceedings and that the district court should have modified his child support obligation. We disagree.

> A party asking for modification of a dissolution decree must establish by a preponderance of the evidence that there has been a substantial change in the circumstances since the entry of the decree or its latest modification of the provisions involved.

In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992). Steven does not argue that there has been any change of circumstances since the last modification hearing. Rather, his argument is exactly the same as it was in the first modification hearing—his voluntary change in employment resulted in a reduction in income. Essentially, he is attempting to attack the decision from the first modification proceeding. Steven's child support obligation was originally set based upon his income from his employment at Alcoa. His earning capacity did not diminish; his decision to take a lower paying job has driven his desire to lower his child support obligation both in 2006 and in the current action. *See McKenzie*, 709 N.W.2d at 534 (discussing that in determining whether to use a

[1] The court utilized income guidelines and determined Steven's income to be $32,235.96 and Jill's to be $23,144.00.

parent's earning capacity rather than actual earnings, a factor to consider is whether the parent's inability to earn a greater income is self-inflicted or voluntary). We agree with the district court Steven failed to carry his burden of proving a material and substantial change in circumstances since the prior modification hearing. *See, e.g.*, *In re Marriage of Maher*, 596 N.W.2d 561, 564-65 (Iowa 1999) ("A party seeking modification of a dissolution decree must establish by a preponderance of the evidence that there has been a substantial change in the circumstances of the parties since the entry of the decree or of any subsequent intervening proceeding that considered the situation of the parties upon application for the same relief.").

We find Steven's arguments forwarded on appeal without merit and affirm the district court. We grant Jill's request for appellate attorney fees in the amount of $1500 and assess costs on appeal to Steven.

AFFIRMED.