

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1060 / 06-0332  
Filed February 28, 2007

**IN RE THE MARRIAGE OF RANDALL S. HOOVER  
AND CARLA I. HOOVER**

**Upon the Petition of  
RANDALL S. HOOVER,**  
Petitioner-Appellee,

**And Concerning  
CARLA I. HOOVER n/k/a CARLA I. PETERSON,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Cass County, Jeffrey L. Larson,  
Judge.

Carla Peterson appeals from the district court's ruling on Randall Hoover's  
application to modify their dissolution decree. **AFFIRMED.**

Carla I. Peterson f/k/a Carla I. Hoover, Lewis, pro se.

Terrance G. Rutherford of Rutherford, Trewet & Knuth, Atlantic, for  
appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VOGEL, P.J.**

Carla Peterson, f/k/a Carla Hoover, appeals from the district court's ruling on Randall Hoover's application to modify their dissolution decree. We affirm.

**I. Background Facts and Proceedings.**

Randall and Carla were married in 1985 and had two children, Randall, Jr. and Justin. The parties' marriage was dissolved in 1994, and Randall was granted physical care of the children. The decree was modified in 2000 and then again in 2002, after Randall, Jr. moved in with Carla. In 2004, Justin also moved in with Carla and the parties entered into a stipulated modification of the decree

On May 26, 2005 Randall filed an application to modify the decree, asking the court to modify the provisions relating to income tax exemptions and post-secondary education support. Carla filed a counterclaim seeking modification of Randall's child support. Following a hearing, the court modified the decree by increasing Randall's child support level, which it based upon his 2005 income of \$47,000. It also awarded him the income tax exemptions for the parties' children beginning in 2005. The court did not address the issue of post-secondary education. Carla appeals from this order claiming a variety of errors.

**II. Scope of Review.**

This modification action was tried in equity. Therefore, our review is de novo. Iowa R. App. P. 6.4. We give weight to the trial court's factual findings, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Guyer*, 522 N.W.2d 818, 820 (Iowa 1994). A party seeking modification of a dissolution decree must establish there has been a

substantial change in circumstances since the entry of the decree. *In re Marriage of Maher*, 596 N.W.2d 561, 564-65 (Iowa 1999).

## **II. Issues Preserved.**

On appeal, Carla raises at least nine issues. We first conclude that Carla has failed to preserve for appellate review those issue not addressed in the district court's ruling. See *Meier v. Senecaut III*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Therefore, this opinion is limited to addressing the district court's (1) determination of Randall's income, (2) allocation of income tax exemptions, and (3) refusal to modify the post-secondary education subsidy.

### **A. Randall's Income.**

Carla claims that in determining Randall's income for purposes of child support calculations, the court should have considered certain commissions he earned in 2005. There was no evidence in the record to support that Randall's commission income was in any way regular, expected, or certain. Rather, Randall testified that the commission he earned in 2005 is not guaranteed in the future. To the extent credibility findings were implicitly made by the district court's acceptance of Randall's explanation of his commission income, we find nothing in the record which would cause us to substitute our judgment for the district court's. Because Randall's commission income is speculative and not guaranteed, the court acted appropriately in not including such income when setting child support. See *In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992).

**B. Tax Exemptions.**

Carla next maintains the court erroneously concluded that circumstances changed to such a degree that it warranted modification of the tax exemption status. We disagree. The original decree was silent on the status of the exemptions. That silence caused no problems, however, until 2004, when both parties claimed the exemptions. This dispute warranted the court's entry of an order on this issue.

At the time of this modification, Carla was unemployed, while Randall in 2005 earned approximately \$47,000 plus commissions. Accordingly, because, lacking any income, the exemptions to Carla would have been of no benefit to her, we affirm on this issue.

**C. Post-secondary Education Subsidy.**

Randall's application to modify the decree asked the court to modify the provisions relating to Randall, Jr.'s post-secondary education subsidy. At the start of trial, however, Randall's attorney informed the court he was withdrawing the issue. The court later determined it was not an appropriate issue to be decided in the modification and did not further address it. Carla now asserts the court erred in failing to reach this issue.

Our review of the record reveals that a post-secondary education subsidy order had previously been entered in this case. At trial, Carla was merely attempting to enforce that existing order. The court, however, noted that such request should be addressed in a different forum. We agree and affirm the court's refusal to modify on this issue.

**Conclusion.**

Whether specifically addressed or not in this opinion, we have considered all issues properly preserved and affirm the district court ruling on all grounds.

**AFFIRMED.**