

IN THE COURT OF APPEALS OF IOWA

No. 7-101 / 06-0755
Filed April 25, 2007

**IN RE THE MARRIAGE OF KEVIN ALLEN FORS
AND CATHERINE MARIE FORS**

**Upon the Petition of
KEVIN ALLEN FORS,**
Petitioner-Appellant,

**And Concerning
CATHERINE MARIE FORS,
n/k/a CATHERINE MARIE BECK,**
Respondent-Appellee.

Appeal from the Iowa District Court for Webster County, Jon Stuart
Scoles, Judge.

Petitioner appeals the district court's decision denying his request to
modify his child support obligation. **AFFIRMED.**

Kevin A. Fors, Harcourt, pro se.

Joseline L. Greenley, Webster City, for appellee.

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

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.**I. Background Facts & Proceedings**

Kevin Fors and Catherine Beck were previously married. A decree of dissolution of marriage was filed on February 21, 2002, which incorporated the parties' stipulation. In the stipulation the parties agreed to joint legal custody of their child, Carl, with Catherine having physical care, and Kevin enjoying liberal and reasonable visitation. Kevin agreed to pay child support of \$350 each month, however, the incomes of the parties supporting this level of support were not specified. During the dissolution proceedings, the district court had imputed annual income to Kevin of \$27,000, resulting in a temporary support obligation of \$362 monthly.

At Kevin's request, in January 2006, the Child Support Recovery Unit (CSRU) filed a motion seeking a hearing on the issue of whether Kevin's child support obligation should be modified. Kevin practices law as a sole practitioner. In 2002, he had gross receipts of \$31,875, and net profits of \$15,362. In 2003, he had gross receipts of \$34,742, and net profits of \$17,571. In 2004, he had gross receipts of \$35,484, and net profits of \$15,719.¹ In 2005, Kevin had gross receipts of \$40,704, and his net profits were as yet unknown. Kevin testified he had as much work as he could do, but he had difficulty collecting payment from clients. He also expressed some recent disillusionment with the practice of law. In 2005, Kevin had taken at least six weeks of vacation to go hunting and fishing.

¹ Kevin paid a client \$5000 in a settlement in 2004. In determining Kevin's net profits, the district court added the \$5000 to Kevin's reported net profits of \$10,719.

At the time of the dissolution Catherine was employed as a registered nurse, and she continues in that employment. In 2005, Catherine earned \$41,981.

The district court determined that if the parties' actual incomes were used, Kevin's child support obligation would be \$249 per month. The court determined, however, that Kevin had the capacity to earn \$25,000 per year, and at this income his child support obligation would be \$349 per month. The court concluded "using Kevin's actual earnings to determine his child support obligation under the child support guidelines would not provide for Carl's needs and would result in a substantial injustice between the parties." The court denied the request to modify Kevin's child support obligation.

Kevin filed a motion to enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2). The district court denied the motion. Kevin appeals.

II. Standard of Review

Our review of this equitable action is de novo. Iowa R. App. P. 6.4. We examine the entire record and decide anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Merits

Kevin contends the district court should have modified the parties' dissolution decree to decrease his child support obligation. He asserts the court

should have used his actual earnings, and reduced the amount of his child support to \$249 per month. Kevin claims the court failed to follow the child support guidelines, and failed to give sufficient reasons for not following the guidelines.

Under Iowa Code section 598.21C(6) (Supp. 2005), when an application for modification of child support is submitted by the CSRU, “the sole issues which may be considered by the court in that action are the application of the guidelines in establishing the amount of support pursuant to section 598.21B, and provision for medical support under chapter 252E.” There is a rebuttable presumption that application of the child support guidelines results in the correct amount of child support to be awarded. Iowa Code § 598.21B(2)(c). A court may vary from the guidelines, however, based on written findings that application of the guidelines would be unjust or inappropriate. Iowa Code § 598.21B(2)(d).

In the present case, the district court applied the child support guidelines using Kevin’s earning capacity, rather than his actual earnings. Our supreme court has approved the use of earning capacity rather than actual earnings in determining the income used to calculate the amount of child support, recently stating:

One of the factors we consider in determining if we will use a parent’s earning capacity, rather than a parent’s actual earnings, in order to meet the needs of the children and do justice between the parties is whether the parent’s inability to earn a greater income is self-inflicted or voluntary.

In re Marriage of McKenzie, 709 N.W.2d 528, 533 (Iowa 2006). A parent may not place selfish desires over the welfare of a child. *Id.* at 534. A parent’s

voluntary reduction in income or earning capacity may be cause to refuse to reduce the parent's child support obligation. *In re Marriage of Rietz*, 585 N.W.2d 226, 229-30 (Iowa 1998); *In re Marriage of Walters*, 575 N.W.2d 739, 741 (Iowa 1998).

The evidence in this case shows Kevin's reduction in income was largely self-inflicted or voluntary. Kevin testified he was "less enthusiastic" about work, and he spent many days on vacation pursuing his hobbies of hunting and fishing. Kevin did not state he was getting less work, but asserted he had trouble collecting payments from his clients. There is no evidence in the record indicating the child's need for support is now less than when the parties agreed on \$350 per month as the appropriate level of support.

We agree with the district court's conclusion that using Kevin's actual earnings would result in a substantial injustice between the parties. We find the district court adequately explained in written findings why Kevin's earning capacity, rather than his actual earnings, should be used in application of the child support guidelines.

Child support may be modified when a substantial change in circumstances from those existing when the support was established is demonstrated. Iowa Code § 598.21C(1). When the support obligation, calculated by using the present incomes of the parties, is at least ten percent less than the existing support, this is deemed a substantial change in circumstance. Iowa Code § 598.21C(2)(a). Calculating child support by using Kevin's imputed

income, the district court found the new support would be \$349 monthly. This does not meet the ten percent threshold, and modification was correctly denied.

We affirm the decision of the district court.

AFFIRMED.