

**IN THE COURT OF APPEALS OF IOWA**

No. 7-791 / 07-0815  
Filed November 15, 2007

**IN RE THE MARRIAGE OF JOEY D. COULTER AND ADELE M. COULTER**

**Upon the Petition of  
JOEY D. COULTER,**  
Petitioner-Appellant,

**And Concerning  
ADELE M. COULTER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Des Moines County, John G. Linn,  
Judge.

Joey D. Coulter appeals after the district court refused to modify the child support provisions of the 1997 decree dissolving his marriage to Adele M. Coulter. **AFFIRMED.**

Thomas D. Marion of Marion Law Office, Keokuk, for appellant.

Marlis J. Robberts of Robberts Law Office, Burlington, for appellee.

Considered by Sackett, C.J., Vaitheswaran and Baker, JJ.

**SACKETT, C.J.**

Joey D. Coulter appeals after the district court refused to modify the child support provisions of the 1997 decree dissolving his marriage to Adele M. Coulter. He contends the district court (1) should have reduced his child support because of a reduction in his income and an increase in Adele's income, and (2) failed to modify his obligation to pay medical expenses of his children not covered by medical insurance. Adele contends (1) the district court was correct in not modifying the child support and (2) error was not preserved on Joey's claim the medical expense provision should have been modified. She also asks for appellate attorney fees.

**I. SCOPE OF REVIEW.**

We review de novo. Iowa R. App. P. 6.4. De novo review requires us to review the record anew. *In re Marriage of Salmon*, 519 N.W.2d 94, 95 (Iowa Ct. App. 1994). Though they do not bind us, we give weight to the district court's credibility determinations. Iowa R. App. P. 6.14(6)(g).

**II. BACKGROUND.**

The dissolution decree approved the parties' stipulation. There the parties had stipulated, among other things, that (1) Joey had an annual income of \$34,000, (2) Adele had an annual income of \$17,000, (3) Adele would have primary physical care of their daughters born in 1993 and 1995, and (4) Joey would pay child support of \$758.34 a month. In addition it was stipulated that Adele would carry health insurance on the children, Joey would pay one half of the premium, and the parties would share equally all medical costs not covered by insurance.

In June of 2006 Joey filed this application for modification contending that his income had decreased, Adele's had increased, and his support obligations should be decreased. After hearing evidence the district court in part found:

Joey points to his tax returns in an effort to convince the Court that he is unsuccessful and slowly going broke. On the other hand he is paying his bills and leading a moderately comfortable lifestyle. Of critical importance to the Court is the fact Joey does not seem to spend his full time doing anything. He dabbles in real estate, his convenience store business, and his apartment rental business. When money is short, he borrows from the bank, his credit cards, and he has spent down his 401(k). His choosing not to work full time at a particular job is voluntary and self-inflicted. The Court concludes Joey has earning capacity in the range of \$37,000 per year and upward to \$51,000 per year. The fact that Joey is not devoting 100 percent of his time and talent to actually earning this amount is no reason to modify downward his child support obligation. The Court concludes, at minimum, Joey's child support obligation should be based on earning capacity in the amount of \$37,000 a year rather than \$20,000 a year. The court makes a finding that not using Joey's earning capacity would be inequitable because: (1) substantial injustice would otherwise result to Adele and the children, and (2) adjustments are necessary to provide for the needs of the children and to do justice between Joey and Adele. The Court concludes Joey's child support obligation shall be calculated using an annual income of \$37,000.

The district court then calculated Joey's child support on the basis of its findings determining that Joey should pay \$694.23 which was \$64.11 less than the \$758.34 he was ordered to pay under the original decree. Finding the current calculation to be less than a ten percent variation from the original support order, the court found Joey was not entitled to a modification of his support obligation. The district court further determined that it would inequitable to reduce Joey's child support obligation and denied the request for modification. The court awarded Adele \$2000 in attorney fees.

### **III. MODIFICATION OF CHILD SUPPORT.**

Pursuant to Iowa Code section 598.21C (Supp. 2005), we are to modify support orders if there is a substantial change in the parties' circumstances. One of the factors we may evaluate is "changes in the employment, earning capacity, income or resources of a party." Iowa Code § 598.21C(1)(a). The Code further defines "substantial change" to be "when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines." Iowa Code § 598.21C(2). A parent may not rely on a claim of decreased income to obtain a modification of a support order if the parent's reduced earning capacity and inability to pay support is self-inflicted or voluntary. Therefore, parents who reduce their income through an improper intent to deprive their children of support or in reckless disregard for their children's well-being are not entitled to a commensurate reduction in child support payments. *In re Marriage of Swan*, 526 N.W.2d 320, 323-24 (Iowa 1995). Joey has failed to make the required showing for a modification. We affirm the district court's denial of a modification of Joey's child support obligation.

### **IV. MEDICAL EXPENSES.**

Joey contends his medical expense obligation should be modified. Adele contends that error was not preserved on Joey's issue that the medical pay provisions should be modified. We agree. The issue was not raised or addressed by the district court. Matters not raised in the trial court cannot be considered on appeal. *In re Marriage of Okonkwo*, 525 N.W.2d 870, 872 (Iowa Ct. App. 1994).

**V. ATTORNEY FEES.**

Adele has requested appellate attorney fees. We award her \$1000 in appellate attorney fees. Costs on appeal are taxed to Joey.

**AFFIRMED.**