

IN THE COURT OF APPEALS OF IOWA

No. 9-964 / 09-0183
Filed December 30, 2009

**IN RE THE MARRIAGE OF MELANIE A. BRUCE
AND CHRIS R. BRUCE**

**Upon the Petition of
MELANIE A. BRUCE,**
Petitioner-Appellee,

**And Concerning
CHRIS R. BRUCE,**
Respondent-Appellant.

Appeal from the Iowa District Court for Allamakee County, John Bauercamper, Judge.

Chris Bruce appeals from the district court's refusal to modify his child support obligation. **AFFIRMED.**

Jeffrey L. Swartz of Jacobson, Bristol, Garrett & Swartz, Waukon, for appellant.

Melanie Bruce, Lansing, pro se.

Onita Mohr, Decorah, for intervenor Child Support Recovery Unit.

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

DANILSON, J.

Chris Bruce appeals the district court's refusal to modify his child support obligation. He argues the district court erred when it determined he failed to show a material and substantial change in circumstances to justify a reduction in his child support obligation. We affirm.

I. Background Facts and Proceedings.

Chris and Melanie were married in May 1995 and have two children, born in January 1996 and May 2000. At the time the parties' marriage was dissolved in April 2006, Chris was thirty-eight years old and Melanie was thirty-nine years old. Chris was a bartender/manager of a local restaurant earning \$10.75 per hour, and was also self-employed in extra jobs, including logging and selling firewood. Chris's annual income was \$27,110. Melanie was employed at Cabela's earning \$13.00 per hour, with an annual income of \$27,040. Melanie provided medical insurance for the children for \$242.66 a month.

The marriage was dissolved by a decree entered in April 2006. Chris was ordered to pay child support in the amount of \$565 per month. No alimony was awarded. A partial stipulation was filed, resolving the issues of physical care and visitation. Melanie received physical care of the children, and Chris was awarded liberal visitation.

Subsequent to the dissolution, Melanie retained the same job and continued to earn approximately the same annual income. However, Chris's income consistently decreased. His annual income was \$26,239 in 2006, and \$23,033 in 2007. On July 31, 2008, Chris was laid off from his job as bartender/manager, and began collecting unemployment benefits in the amount

of \$286 per week. In August 2008, the Child Support Recovery Unit (CSRU) estimated Chris's annual income in 2008 to be \$23,436.¹

At Chris's request, in September 2008, CSRU filed a request for a hearing for modification of his child support obligation. After a modification hearing in January 2009, the district court determined that a substantial and material change in circumstance had not occurred. As the court stated, Chris's "loss of employment appears to be a temporary matter and he has not shown sufficient efforts to obtain employment and live within his means." Chris filed a motion for enlarged or amended findings, which the court denied. He now appeals.

II. Scope and Standard of Review.

We review the modification of a dissolution decree de novo. Iowa R. App. P. 6.907 (2009); *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004). We give weight to the district court's fact findings, especially when we consider witness credibility, but we are not bound by those findings. Iowa R. App. P. 6.907; *McCurnin*, 681 N.W.2d at 327. The district court has reasonable discretion in determining whether modification is warranted and we will not disturb that discretion on appeal unless there is a failure to do equity. *In re Marriage of Walters*, 575 N.W.2d 739, 741 (Iowa 1998). Prior cases have little precedential value, and we must base our decision on the facts and circumstances unique to the parties before us. *In re Marriage of Kleist*, 538 N.W.2d 273, 276 (Iowa 1995). Our primary concern is the best interests of the children. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988).

¹ This estimation was based on Chris's prior earnings, not his unemployment benefits. In his brief to this court, Chris alleges his annual income in 2008 was slightly more than \$21,000.

III. Merits.

Chris argues the court erred when it determined he failed to show a material and substantial change in circumstances to justify a reduction in his child support obligation. He contends his income dropped 17.4% from 2006 to 2007 (from \$26,239 in 2006, to \$23,033 in 2007). Chris further contends that after he got laid off in July 2008, his income for 2008 was slightly more than \$21,000. At the modification hearing, however, Chris requested the court to use his income figures from his last period of employment (approximately \$23,400) to determine his 2008 child support obligations. Using those figures, he contends the court erred in failing to find that his child support obligation should be reduced from \$565 per month to \$482.33 per month.

The provisions of a dissolution decree may be modified when there has been a substantial change in circumstances. See Iowa Code § 598.21C(1) (2009). “However, not every change in circumstances constitutes a sufficient basis for modification.” *In re Marriage of Chmelicek*, 480 N.W.2d 571, 574 (Iowa Ct. App. 1991). A substantial change of circumstances for modifying a child support obligation “exists 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. . . .”² Iowa Code § 598.21C(2)(a).

² We note, however, that the administrative rules promulgated by the Iowa Department of Human Services under section 252B.5(7) to implement its duty to review requests to modify support obligations provide that “[p]rocedures to adjust the support obligation shall be initiated only when the financial and other information available . . . indicates that the: (1) Present child support obligation varies from the . . . guidelines by more than twenty percent.”

We do not dispute that Chris's income has decreased, and Melanie did not submit a brief on appeal or otherwise introduce evidence to this court arguing to contrary. Upon our finding that Chris's loss of employment was involuntary, we determine there has been a change in circumstances. We must now review whether the change was substantial so as to justify a reduction in Chris's child support obligations.

As the district court noted:

Chris is 41 years old, a high school graduate, and in good health. He has worked as a mechanic, owns mechanic's tools which he values at \$11,000.00, and has worked the last several years as the manager of several bar/restaurants in the area. He also works part-time cutting and selling firewood, and hauling and selling scrap metal. He has had no employment for wages since his lay-off last summer. He testified that he has been looking for work, but has not found employment. No details were provided regarding his efforts to obtain employment. No verification was provided regarding his 2008 earnings.

In August of 2008 after his layoff, Chris purchased a new Harley Davidson motorcycle for over \$16,000 on credit, with no money down. He has made only one payment on it. He has some bank loans in deferral status, has used up his savings, and has accumulated some credit card debt.

.....
The court is not satisfied that a substantial change in circumstances has occurred since the last child support order sufficient to justify a reduction in support. Respondent's loss of employment appears to be a temporary matter and he has not shown sufficient efforts to obtain employment and live within his means.

Not every change in circumstances constitutes a sufficient basis for modification. *In re Marriage of Flattery*, 537 N.W.2d 801, 803 (Iowa Ct. App. 1995). Chris had the burden to establish his change in circumstances was permanent and not temporary. *See id.* Upon our review, we conclude Chris failed to demonstrate he could not obtain employment which would provide him

with a level of salary comparable to that which he received when the child support obligation was entered in 2006. Chris has valuable work experience in several different areas of employment, and did not present adequate evidence that his lack of employment was permanent.

Further, we find it important to note that a month after he was laid off, Chris purchased a Harley Davidson motorcycle for over \$18,000 on credit. On the credit application Chris filled out on August 29, 2008, for the motorcycle, he alleged he was self-employed and had an annual gross income of \$30,000. At the same time, Chris informed CSRU and the court (for child support purposes) that his gross income consisted of his unemployment income and was slightly more than \$21,000 annually.

Under these circumstances, it was appropriate for the court to rely on Chris's earning capacity (as demonstrated by his salary while employed in 2006) in declining to modify his child support obligation. We affirm the court's ruling in this case.

AFFIRMED.