

IN THE COURT OF APPEALS OF IOWA

No. 6-151 / 95-379

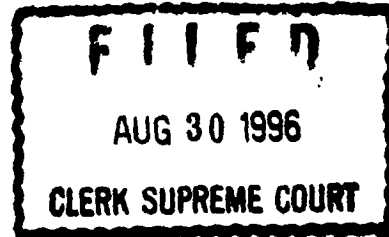
**IN RE THE MARRIAGE OF DANIEL GEORGE WARDEN
AND NANCY EILEEN WARDEN**

Upon the Petition of
DANIEL GEORGE WARDEN,

Appellant,

And Concerning
NANCY EILEEN WARDEN,

Appellee.



Appeal from the Iowa District Court for Linn County, William Eads, Judge.

Daniel Warden appeals from a modification of the parties' dissolution decree decreasing Nancy Warden's child support obligation. **AFFIRMED.**

Mona Knoll of Nazette, Marner, Good, Wendt & Knoll, Cedar Rapids, until her withdrawal, then John Stitely, Cedar Rapids, until his withdrawal, and then William F. Olinger of William F. Olinger Law Firm, Cedar Rapids, for appellant.

Henry E. Nathanson of Johnston, Potterfield & Nathanson, P.C., Cedar Rapids, for appellee.

Considered by Cady, P.J., and Streit, and Vogel, JJ.

PER CURIAM

This is an appeal by a husband challenging the district court's modification of the parties' dissolution decree to decrease the wife's child support obligation. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Daniel and Nancy Warden were divorced in March 1991. The dissolution decree granted Daniel primary physical care of the parties' three children: Daniel (Chad), born in 1976; Anthony, born in 1978; and Theodore, born in 1980. Nancy was then a student, and was not required to pay child support. Daniel appealed. We modified the decree to require Nancy to pay child support of \$43 per month. *In re Marriage of Warden*, No. 1-565 / 91-686 (Iowa App. May 28, 1992).

Nancy later remarried and obtained employment as a medical assistant in a nursing home in Colorado. Her annual income was about \$11,500, and she had net monthly income of \$865. In May 1993, the district court modified the dissolution decree to require Nancy to pay child support of \$309 per month.

On July 5, 1993, Nancy injured her neck at her job. She has not been able to return to her previous employment. Nancy moved back to Iowa and is attending the Kirkwood Skills Center for Vocational Rehabilitation. She hopes to obtain training in medical transcribing. Daniel is employed by the Chicago and Northwestern Railroad, where he has income of \$37,000, and net monthly income of \$2,126.

On August 24, 1994, Nancy filed a petition to modify the decree to reduce her child support obligation. At that time Nancy was only responsible for the support of

two children because Chad had turned eighteen in April 1994. The court found Nancy could not work as a medical assistant and needed training to obtain employment. The court reduced her child support obligation to \$50 per month.

Daniel has appealed. He contends Nancy's child support obligation should be based on her earning capacity instead of her actual earnings. He believes Nancy failed to show she could not obtain any employment at the present time.

We give considerable weight to the trial court's factual findings, especially concerning the credibility the witnesses. *In re Marriage of Craig*, 462 N.W.2d 692, 693 (Iowa App. 1990). This is because the district court had an opportunity to view the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). The district court found Nancy's claims that she was unable to obtain employment without retraining to be credible. It is clear that Nancy was injured and because of medical restrictions cannot return to her previous employment. We affirm the conclusion of the district court that Nancy has no present income and should only be required to pay minimal child support of \$50 per month.

Nancy seeks attorney fees for this appeal. We determine Daniel should pay \$500 towards Nancy's attorney fees for the appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Daniel.

AFFIRMED.