

IN THE COURT OF APPEALS OF IOWA

No. 2-621 / 92-576

FILED

SEP 02 1993

CLERK SUPREME COURT

IN RE THE MARRIAGE OF SUSAN CAROL BELL AND
VAUGHN DAVID BELL

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Upon the Petition of
SUSAN CAROL BELL,

Appellant,

And Concerning
VAUGHN DAVID BELL,

Appellee.

Appeal from the Iowa District Court for Polk County,
Rodney J. Ryan, Judge.

The wife appeals the district court's order modifying
the parties' dissolution decree. **REVERSED AND REMANDED.**

Robert M. Benton of Stuyvesant & Benton, Carlisle, for
appellant.

Rick L. Olson, Des Moines, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

PER CURIAM 000028

On March 1, 1984, the district court entered an order dissolving the marriage of Susan and Vaughn Bell. The parties have two children: Cathryn, born on February 24, 1976, and Nicholas, born on March 17, 1982. Pursuant to the parties' stipulation, the court awarded physical custody of the parties' two children to Susan. The court ordered Vaughn to pay child support in the amount of \$300 per month per child. At the time of the dissolution Vaughn's gross income was approximately \$2219 per month, including overtime and bonuses. Susan's gross income was approximately \$910 per month.

On August 8, 1991, Vaughn filed an application for modification of his child support obligation under the dissolution decree. In January 1992 a hearing was held on the application.

On March 9, 1992, the district court entered its ruling modifying the parties' dissolution decree. The district court concluded Vaughn had established a substantial change of circumstances warranting modification of his child support obligation. The substantial change of circumstances was based on the findings Susan's income had increased substantially while Vaughn's income had decreased. Pursuant to the Iowa Child Support Guidelines, the district court ordered Vaughn to pay \$430 per month in child support. All other provisions of the decree remained the same.

Susan appeals, challenging the district court order reducing Vaughn's child support obligation.

Our standard of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the district court, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Child Support. Courts may modify child support provisions of a dissolution decree only if there is a material and substantial change of circumstances of the parties, financially or otherwise, making it equitable different terms be imposed. In re Marriage of Jensen, 251 N.W.2d 252, 254 (Iowa 1977); Iowa Code § 598.21(8) (1993).

Pursuant to the original dissolution decree Vaughn was ordered to pay child support in the amount of \$300 per month for each of his two children. At that time Vaughn was employed as a shift manager for Hy-Vee Foods, located on East Euclid Avenue in Des Moines. His base pay of \$11.75 per hour, plus overtime and bonuses, resulted in a gross monthly pay of \$2219. On August 8, 1991, Vaughn filed an application for modification of his child support obligation. He was then earning a gross monthly income of \$2040.65 as a shift manager for the Hy-Vee store located on Harding Road.¹ His hourly wage was \$11.75. On November 29, 1991, Vaughn changed jobs within the company and became a deli employee at the Harding Road store. As a result,

1. While this appeal was pending the name of Harding Road changed. Harding Road is now known and designated as Martin Luther King, Jr. Parkway.

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Vaughn took a reduction in pay to \$10 per hour. At the time of the modification hearing Vaughn was earning a gross monthly income of \$1733.33.

Generally, a modification should be granted if there has been a substantial lowering of earning power for a substantial period of time. In re Marriage of Dawson, 467 N.W.2d 271, 275 (Iowa 1991) (citations omitted). This principle, however, does not apply when the inability to pay the child support is voluntary. Id. (citations omitted). Vaughn's decision to change jobs from a shift manager, earning \$11.75 per hour, to a deli employee, earning \$10 per hour, was voluntary. Vaughn decided to change positions and accept a lower wage three and one-half months after he filed for a modification of his child support obligation. Vaughn cannot rely on his decrease in income as grounds for modification of his child support obligation.

Case law indicates three trends in situations in which a modification of support has been sought after a reduction in income:

- (1) a growing reluctance to modify decrees;
- (2) current inability to pay has become less a consideration and long range capacity to earn money has become more of a consideration; and
- (3) any voluntariness in diminished capacity has become increasingly an impediment to modification.

In re Marriage of Vetterneck, 334 N.W.2d 761, 763 (Iowa 1983); see In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987).

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Vaughn's overall financial condition is also affected by his remarriage in 1988. Vaughn and his second wife, Carolyn, have one child, born November 30, 1987. Carolyn is employed at Hy-Vee and earns approximately \$1291.66 per month gross. A stepparent's income is considered because it relates to Vaughn's overall financial condition. In re Marriage of Linberg, 462 N.W.2d 698, 701 (Iowa App. 1990) (citations omitted); Iowa Code § 598.21(8)(g) (1993).

We consider other factors surrounding changes in the financial conditions of both parties. Currently Susan owns a home valued at \$35,000 with an encumbrance of \$23,490. Susan also owns an unencumbered automobile valued at \$5500. Vaughn rents an apartment and owns an unencumbered automobile valued at \$1000. Susan's income has increased since the decree was filed. Her current gross income equals \$1200 per month. At the time of the dissolution Susan was earning \$910 in gross monthly income.

The increasing needs of the two minor children may also be considered in determining whether to modify a noncustodial parent's child support obligation. In re Marriage of Stutsman, 311 N.W.2d 73, 76 (Iowa 1981) (citation omitted). At the time of the modification hearing Cathryn and Nicholas were almost sixteen and ten years old respectively. The children were only approximately eight and two years old respectively at the time of the dissolution. The maturing of the children is accompanied by increased needs and expenses.

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Vaughn has failed to show a material and substantial change of circumstances sufficient to warrant modification of his child support obligation. We reverse the trial court's order which reduced Vaughn's monthly child support obligation to \$430.. We remand this case to the district court with instructions to set Vaughn's monthly child support obligation at its previous amount of \$300 per child.

II. Attorney Fees. Susan requests attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Fishback, 498 N.W.2d 419, 421 (Iowa App. 1992) (citing In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987)). We order Vaughn to pay \$750 to Susan to apply upon her appellate attorney fees.

Costs of this appeal are taxed to Vaughn.

REVERSED AND REMANDED.