

IN THE COURT OF APPEALS OF IOWA

No. 4-589 / 94-309

**FILED**

FEB 28 1995

CLERK SUPREME COURT

IN RE THE MARRIAGE OF TERRI L. SCHOETTNER AND  
LOUIS JEFFREY SCHOETTNER

Upon the Petition of  
TERRI LYNNE SCHOETTNER n/k/a  
TERRI LYNNE BAKER,

Appellant,

And Concerning  
LOUIS JEFFREY SCHOETTNER,

Appellee.

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Appeal from the Iowa District Court for Benton County,  
Thomas L. Koehler, Judge.

Terri Schoettner appeals a modification of the parties'  
dissolution decree. **AFFIRMED.**

Morris L. Eckhart of Milroy & Eckhart, Vinton, for  
appellant.

Rick R. Lubben, La Porte City, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

**HAYDEN, P.J.**

Terri and Louis Schoettmer's seven-year marriage was dissolved in November 1990. The parties have two children: Destiny, born June 13, 1984; and Candice, born July 23, 1986. Destiny is a ward of the State of Oklahoma and resides in a facility there due to her physical and mental disabilities. The parties' dissolution decree awarded primary care of Candice to Terri and ordered Louis to pay \$154 per week in child support.

In January 1993 Louis filed a modification petition requesting a decrease in child support due to a substantial change in the parties' incomes. The trial court found Louis's net monthly income was \$1991, and Terri's was \$432. The court noted Terri had remarried and her husband earned a net monthly income of \$1419. The trial court concluded Louis was earning approximately twenty-five percent less than the income attributed to him at the time of the decree. Louis's child support obligation was reduced to \$119.65 per week, and he was granted tax exemption for Candice if he stayed current in his child support.

Terri appeals. She claims the trial court erred in reducing Louis's child support obligation. Terri also claims the trial court should not have granted Louis tax exemption for Candice. We affirm.

### **I. Scope of Review.**

Appellate review of a trial court's modification of a dissolution decree is de novo. Iowa R. App. P. 4; In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

### **II. Child Support.**

In the instant case, the trial court reduced the level of child support from \$154 to \$119.65 per week. Terri claims the court erred in reducing Louis's child support obligation. We disagree.

The trial court may modify orders for child support when there is a substantial change in circumstances. Iowa Code § 598.21(8) (1993). By statute, specific factors are to be considered in making this determination. Iowa Code § 598.21(8), (9). These factors include change in employment, earning capacity, and income of the parties. Iowa Code § 598.21(8)(a).

In this case, there was evidence Louis was earning approximately twenty-five percent less than the income attributed to him at the time of the decree. Terri has remarried. The trial court's modification of child support payments will not be disturbed on appeal in the absence of

a failure to do equity. In re Marriage of Smith, 501 N.W.2d 558, 560 (Iowa App. 1993). Under this record, we cannot say the trial court failed to do equity. The trial court is affirmed on this issue.

### III. Income Tax Exemption.

Terri further argues the trial court erred in allowing Louis to claim Candice as a dependent for income tax purposes. We disagree.

The general rule is the custodial parent is allowed to claim the exemption. I.R.C. § 152(e)(1) (1994). The custodial parent is treated as having furnished over half of the child's support. Id. There are three exceptions to the rule that a custodial parent is entitled to the dependency exemption: (1) when there is a multiple support agreement that allows the child to be claimed as a dependent by a taxpayer other than the custodial parent; (2) when the custodial parent releases his or her right to the child's dependency exemption to the noncustodial parent by executing IRS Form 8332; and (3) when a pre-1985 divorce decree or separation agreement between the parents grants the exemption to the noncustodial parent and the noncustodial parent provides at least \$600 for the support of the child for the year in question. I.R.C. § 152(e)(2), (3), and (4).

Under this record, it would be inequitable for Terri to receive child support from Louis as well as the benefits afforded by the ability to claim the parties' child as a

tax dependent. Louis should be allowed to claim Candice as a dependent for income tax purposes, so long as he is current with his child support payments. We direct Terri shall, on or before February 15 of each year, furnish Louis with the forms necessary for him to claim the deduction on both his federal and state returns for Candice for the preceding calendar year. We reiterate Terri is directed to do this only if Louis is current with his child support payments. The trial court is affirmed on this issue.

Costs on appeal are to be divided evenly between Louis and Terri. Judgment of the trial court affirmed.

**AFFIRMED.**