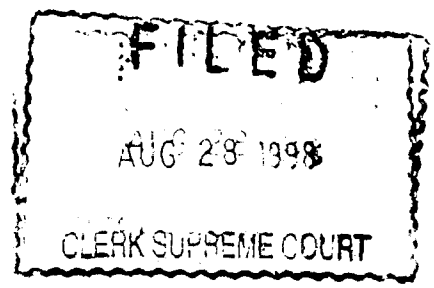
IN THE COURT OF APPEALS OF IOWA

No. 8-031 / 97-0549

IN RE THE MARRIAGE OF RONALD R. STONE AND JANET R. STONE



Upon the Petition of
RONALD R. STONE,
Appellee,

And Concerning
JANET R. STONE,
Appellant.

Appeal from the Iowa District Court for Marion County, Richard D. Morr, Judge.

Respondent appeals, and petitioner cross-appeals, from the district court's modification of the child support provisions of the parties' dissolution decree. **AFFIRMED.**

Chris D. Shepperd of Kreykes & Shepperd, Pella, for appellant.

David A. Johnson of Johnson & Lane, Knoxville, for appellee.

Considered by Cady, C.J., and Huitink, and Mahan, JJ. Streit, and Vogel, JJ. take no part.

CADY, C.J.

Janet Stone appeals and Ronald Stone cross-appeals the district court's modification of the child support provisions of the dissolution decree. We affirm the district court.

Ronald and Janet Stone divorced on February 11, 1994. The district court awarded Janet primary physical care of the parties' two children. Ronald was ordered to pay $565 per month in child support.

Janet has worked in the health care industry for approximately fifteen years. She worked full-time as an operating room technician at Pella Hospital until her hours were cut back to twelve to fifteen hours per week. At the time of the modification trial she was working part-time at the hospital and had not secured additional employment. Her stipulated earning capacity for child support purposes is $14,000 per year.

Ronald earned between $26,000 and $28,000 per year as a factory employee at the time of the dissolution. Following the dissolution he took a job as a plant manager in Pella. This resulted in an increase in his income to $38,000 per year plus bonuses. Based on this increase in his income, Ronald's child support obligation was increased to $750 per month. Ronald was also required to provide transportation at the start and conclusion of visitation.

Ronald eventually received news his employer was closing the plant and his position as plant manager would be terminated. He declined a transfer offer to Florida due to the working and living conditions in Florida as well as the difficulty

which would occur with visitation. Ronald ultimately accepted a position with Randall's Formal Wear in Sioux City, Iowa at a salary of $28,000 per year. His salary subsequently increased to $31,000 per year.

In addition to Ronald's full-time employment, he has repaired sewing machines on a part-time basis. Ronald testified the business brought in approximately $1300 per year. He no longer pursues this business, however, because his employer discourages employment outside of the company. Nevertheless, he repaired two machines several weeks prior to trial.

Ronald petitioned for a modification of child support following his reduction in income. The district court determined a material change in circumstances occurred warranting a reduction in child support to $529 per month. The district court further found no material change occurred warranting a change in the visitation arrangement.

On appeal Janet claims the district court erred by finding a substantial change in circumstances occurred warranting a modification of child support. Janet also claims the amount of support is insufficient. Additionally, she requests trial and appellate attorney fees. On cross-appeal Ronald asserts the district court erred by failing to require Janet to pay one-half of the transportation costs of visitation or provide part of the transportation for visitation.

I. Child Support

We review this equitable matter de novo. Iowa R. App. P. 4. This requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). At the

same time, we recognize the value in listening to and observing the parties and witnesses. Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.* We also recognize the district court has reasonable discretion to determine whether a modification action 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).

Child support provisions of a decree for dissolution of marriage may be modified when there has been a substantial change of circumstances making it equitable to do so. Iowa Code § 598.21(8) (1997). Iowa Code section 598.21(9) provides "a substantial change in circumstances 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...." A self-inflicted or voluntary inability to pay child support, however, will not support the modification of a child support award. *In re Marriage of Colby,* 569 N.W.2d 157, 158 (Iowa App. 1997). We examine the employment history, present earnings, and reasons for failing to work a regular work week when assessing whether to use the earning capacity of a parent. Iowa Code § 598.21(8)(a).

Janet first asserts the trial court erred by concluding a material change in circumstances occurred warranting a modification of child support. She claims: (1) Ronald's salary at Randall's Formal Wear is temporary and will increase; (2) the modification defeats the long-term goals of child support modification because she will be required to petition for modification after each salary increase Ronald

receives; and (3) Ronald is able to meet the higher support obligation considering his wife's income.

We must first determine whether the district court properly determined a substantial change in circumstances occurred warranting a modification of the decree. Ronald's child support obligation deviates by more than the ten percent under the guidelines. Iowa Code section 598.21(9) expressly provides this situation constitutes a substantial change in circumstances. *See In re Marriage of Raue*, 552 N.W.2d 904, 906 (Iowa App. 1996). We therefore conclude the district court properly determined a substantial change in circumstances occurred warranting a modification of the child support provision of the decree. We also find Ronald did not voluntarily reduce his income. He lost his job because the company closed its operation in Iowa. Ronald then proceeded to secure employment at the highest salary he could obtain. *See In re Marriage of Fidone*, 462 N.W.2d 710, 712 (Iowa App. 1990) (failure to relocate to community where employer moved business was motivated by desire to remain close to family and lack of job security at new location, and was not a voluntary reduction in ability to pay child support).

Further, while remarriage is a factor to consider in finding a substantial change in circumstances occurred, we do not find the $11,000 per year contribution from Ronald's wife justifies a deviation from the guidelines. Iowa Code § 598.21 (8)(g); *see In re Marriage of Linberg*, 462 N.W.2d 698, 701 (Iowa App. 1990) (finding step father was only obligated to support stepchildren to the extent their living in his home increased the cost of the their maintenance by reason of the higher

living standard to which they have become adjusted in his home). Finally, we base Ronald's child support obligation on the salary he is actually earning. Although his salary may grow, there are no guarantees this will occur. It is therefore more appropriate for Janet to seek a modification in the event this occurs.

We next consider Janet's challenges to the amount of child support. She maintains the income from Ronald's sewing machine repair business should be included in his income. She also claims the health insurance premium deduction should include only the cost of insuring the children, rather than also including coverage for Ronald and his wife. Janet further asserts Ronald's income should be calculated based upon his actual tax liability rather than the taxes being withheld from his paycheck. Finally, she contends in light of the parties' respective needs and ability to pay, a deviation from the guidelines requiring Ronald to pay greater child support would be equitable.

Ronald testified he does not intend to pursue the sewing machine repair business. His employer also discourages outside employment. Therefore, we do not find it necessary to include this income for child support purposes. Furthermore, Janet has failed to provide sufficient evidence indicating Ronald could purchase health insurance through his employer at a lower rate for his children than for his family. Additionally, we find the district court's use of tax withholdings from Ronald's paycheck to determine his tax liability reasonable.

There is a rebuttable presumption child support determined by the application of the guidelines is correct. *In re Marriage of Thede*, 568 N.W.2d 59, 61 (Iowa App.

1997). Janet has failed to overcome this presumption. While she has a lower earning capacity than Ronald, this alone does not justify a deviation from the guidelines. Additionally, although Ronald is working to his potential, his standard of living is not substantially greater than hers. We therefore conclude the guideline amount provides an equitable child support award.

II. Visitation

On cross-appeal Ronald maintains Janet should pay half of the transportation costs associated with visitation, or, alternatively, she should provide transportation for one way of the visitation. In some instances, it is equitable to require sharing of transportation costs. *In re Marriage of Wahlert,* 400 N.W.2d 557, 561 (Iowa 1987).

In this case we find it equitable for Ronald to provide the transportation for visitation. Ronald moved to Sioux City for personal as well as professional reasons. Although he was able to find employment in Sioux City, his wife was from the area and had been working there three days out of the week. While the move is more convenient for his new family, it is not in the best interests of his children. Further, Ronald is in the better position to bear the costs of transportation. For these reasons, we deny his request to require Janet to provide part of the transportation or for one half of the costs of transportation.

III. Attorney Fees

We have considerable discretion in awarding attorney fees. *In re Marriage of Gonzalez,* 561 N.W.2d 94, 99 (Iowa App. 1997). To overturn an award of attorney fees, the complainant must show the trial court abused its discretion. *Id.* We find the

trial court did not abuse its discretion in awarding attorney fees and we decline to disturb the trial court's findings.

An award of appellate attorney fees is not a matter of right, but rests in our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. 1997). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Id.* In this case we find each party should pay their own appellate attorney fees.

We have considered all of the parties' claims and affirm the district court.

AFFIRMED.