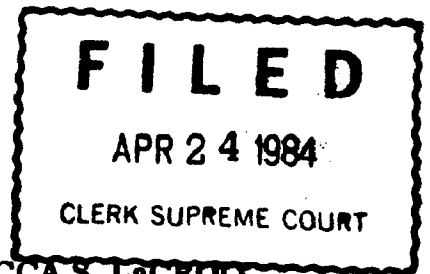


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF WILLIAM M. LaCROIX AND REBECCA S. LaCROIX

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Upon the Petition of	)	
WILLIAM M. LaCROIX,	)	Filed April 24, 1984
Petitioner-Appellant,	)	
And Concerning	)	
REBECCA S. LaCROIX,	)	<u>4-112</u>
Respondent-Appellee.	)	83-1018

Appeal from the Iowa District Court for Page County - Glen M. McGee,
Judge.

Appellant appeals from a modification of the dissolution decree changing custody of the parties' children and increasing the amount of child support appellant is required to pay. AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Verd R. Bailey of Davidson & Bailey, Clarinda, Iowa, for petitioner-appellant.

Gary T. Gee of Gee & Gregg, Shenandoah, Iowa, for respondent-appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

Appellant, petitioner in the underlying dissolution action, appeals from a modification of the dissolution decree changing custody of the parties' children and increasing the amount of child support appellant is required to pay.

The marriage of William M. LaCroix and Rebecca S. LaCroix was dissolved on June 22, 1982. The parties were granted joint custody of their two children: Kerrie, born in 1965, and Michael, born in 1967. William was given physical care of Kerrie and Rebecca was given physical care of Michael. William was directed to pay \$240 per month child support for Michael and \$300 per month alimony.

In December, 1982, Rebecca filed a petition for modification of the decree and modification was ordered June 21, 1983. The trial court found that, pursuant to an agreement between the parties, Kerrie had actually been living with Rebecca since October of 1982 and Michael had been living with William since February of 1983. The court also found that William had received a substantial increase in salary since the decree, while Rebecca's income had remained the same. The court further concluded that Rebecca's expenses for Kerrie would be more than for Michael. Therefore, the trial court directed William to pay \$340 per month child support for Kerrie. The court also ordered William to pay \$480 per month child support for the months both children had lived with Rebecca.

At trial on the modification, William's counsel moved for a continuance stating that he had been unable to contact William to notify him of the trial date. The motion was denied and the trial proceeded without William.

On appeal, William asserts that the trial court erred in modifying his child support obligation since there had not been a substantial change in the parties' financial situation since the dissolution decree. He also contends that the trial court abused its discretion and denied him due process when it refused to grant his motion for continuance.

Since this is an equitable action, our review is *de novo*. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to

them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Child Support. Under Iowa Code section 598.21(8), the trial court is authorized to modify child support orders when there has been a substantial change in circumstances since the original decree. The court is directed to consider each parent's earning capacity, economic circumstances, and cost of living. Id. Interpreting the statute, the supreme court has stated:

A decree will not be modified unless its enforcement will be attended by positive wrong or injustice as a result of the changed conditions. Modification should be based upon a change of circumstances more or less permanent or continuous, not temporary, and where a change of financial condition of one or both of the parties is relied upon, it must be substantial.

Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973). In Spaulding, the court increased the child support to the mother ordered in a 1959 divorce decree where the evidence showed that the father's annual salary had doubled, both children had developed medical problems, and one child needed braces. Id. The court made the increase retroactive to the date the application for modification was filed. Id. at 636.

In the present case the trial court justified the modification by finding that while Rebecca's income had remained at the same level, William's had substantially increased since the time of the dissolution. The evidence in the record does not support this conclusion. According to the financial affidavits, William's net annual salary increased from \$19,850.74 on June 1, 1982, to \$21,746.40 on February 18, 1983. Over approximately the same period of time, Rebecca's net annual salary increased by about \$1,500 as shown by financial affidavits she filed. This does not constitute a substantial change in the financial situation of the parties sufficient to justify modification of the dissolution decree.

The trial court also found that there was a substantial change in the amount of child support needed by Rebecca because it is more expensive to have physical care of Kerrie than it was to have physical care of Michael. Rebecca testified that since Kerrie was driving, her gasoline bill increased approximately \$100 per

month and that an extra \$50 per month for clothing is needed for Kerrie than was needed for Michael. Although we can take into account the needs of growing children, In re Marriage of Stutsman, 311 N.W.2d 73, 76 (Iowa 1981), we find that there has not been a substantial change in circumstances in this case. See Mears v. Mears, 213 N.W.2d 511, 516-17 (Iowa 1973). The record shows that Michael was 16 years old at the time of trial and presumably will be driving shortly. Surely these transportation expenses were contemplated by the court at the time of the dissolution decree. Furthermore, the amount of gasoline consumed does not depend upon whether the child drives himself or herself or whether the parent drives the child where he or she needs to go. Finally, we do not consider additional clothing needs attributable solely to the sex of the child to be a change of such magnitude that it would warrant a modification of the decree.

The court also ordered William to pay \$480 per month child support for the months both children lived with Rebecca. Although we understand the extra financial burden on Rebecca, the period in question was only two months. This is not a change of a permanent and continuous nature as required by Spaulding.

Since there was no substantial change in the economic position of the parties, the trial court should not have modified William's child support obligation. We remand this case for entry of judgment consistent with this opinion reinstating the child support provisions of the dissolution decree.

II. Child Custody. Neither party has objected in this appeal to the modifications made in the custody provisions of the dissolution decree. These changes are justified since they reflect the wishes of the parties and the children. Therefore, we do not disturb the modification in this regard. However, we do clarify the modification by noting that the trial court changed only the physical care arrangements for both children. Each party still has joint legal custody of each child.

III. Motion for Continuance. Our holding in part I of this opinion makes it unnecessary to consider William's claims that he was denied due process when the court increased his support obligations in his absence.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.