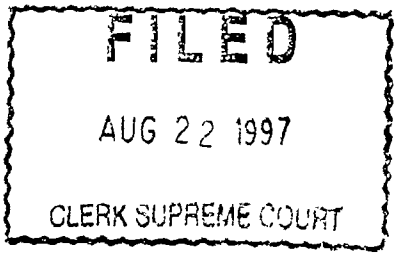
IN THE COURT OF APPEALS OF IOWA 000147

No. 7-347 / 96-1018

IN RE THE MARRIAGE OF MICHAEL J. HACKMAN AND CHERYL L. HACKMAN



Upon the Petition of
MICHAEL J. HACKMAN,
Appellant,

And Concerning
CHERYL L. HACKMAN,
Appellee.

Appeal from the Iowa District Court for Chickasaw County, John Bauercamper, Judge.

Michael Hackman appeals the district court's denial of his petition requesting modification of the parties' dissolution decree. **AFFIRMED.**

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellant.

Russell Schroeder, Jr., of Schroeder Law Office, Charles City, for appellant.

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

VOGEL, J.

Michael Hackman asked the district court to modify the $540.00 per month child support he was ordered to pay under the original dissolution of marriage decree. The court denied his petition, reasoning that Michael had voluntarily reduced his income by changing jobs and "his current plight remains a function of his earlier voluntary change in employment and voluntary reduction in income." We agree with the trial court's reasoning and affirm.

Scope of review. Our scope of review of this modification action is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 4.

The marriage of Michael and Cheryl was dissolved by decree dated October 14, 1991. Michael was earning $16,128 plus benefits from his full-time job at Sara Lee, and $5,410 from a part-time welding job, netting a total of about $1500 per month. Cheryl was unemployed. The child support guidelines indicated and the court ordered child support at $540 per month. Michael then quit the Sara Lee job to work full-time as a welder at Waucoma Welding, which reduced his net monthly income by approximately $300. Cheryl became employed and was earning $1,160. Michael petitioned the court to reduce his child support in May of 1993. The court, finding Michael had voluntarily reduced his income, denied the petition.

Michael's current petition to modify incorporates the above information, in addition to the fact that Michael was laid off from Waucoma Welding and after a short period of drawing unemployment, took new work at Lynch Livestock for $7.00 per hour, or $1009 per month. Cheryl's income has increased to $1708 per month. The trial court found the proper guidelines amount of support under the most current financial information for the parties would be $404 per month. In denying his petition to modify, the trial court found that Michael's initial decision to leave Sara Lee with the income level he was at when the decree was entered, was the genesis of his current predicament. Significantly, the 1993 decision to deny a reduction of support was based on these same facts, except for the recent layoff and re-employment. That decision was not appealed. An additional factor the trial court now has before it is that Michael has received $30,000 from a testamentary trust ($10,000 each year for the past three years), with no testimony regarding future distributions.

Michael argues that his initial decision to leave Sara Lee and the resulting reduction in income have become a "life sentence" for him unless he finds employment that equals or exceeds that which he was earning at the time of the decree. He is right. His earning capacity has not changed. Thus, because Michael is "underemployed" currently (making $491.00 less per month compared to his financial position at the time of the decree) does not mean his long-range *capacity* to earn money has been diminished. *See In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987). In this case, we adhere to a general rule that "modification should be

granted if there has been a *substantial* lowering of *earning power* for a sustained period of time." *In re Marriage of Cooper*, 524 N.W.2d 201, 207 (Iowa App. 1994) (quoting *In re Marriage of Shepherd*, 429 N.W.2d 145, 147 (Iowa 1988)). (Emphasis added.) We find no such evidence here. Our supreme court has increasingly recognized in modification cases that "current inability to pay has become less a consideration and long range *capacity* to earn money has been more of a consideration . . . ." *In re Marriage of Wahlert*, 400 N.W.2d at 560 (citing *In re Marriage of Vetternack*, 334 N.W.2d 761, 763 (Iowa 1983)). (Emphasis added.) We note that if Michael's income had remained the same as it was at the time of the original decree and Cheryl's income increased to its current level, the guidelines indicate Michael's child support obligation for four children would be $600.

The mere passing of time does not rise to a substantial change of circumstances warranting a reduction of child support. Nor does a parent's desire to change jobs merit such a reduction. The plain fact remains that support is for the benefit of the children and what parents voluntarily do in changing jobs and lowering their income should not result in depriving the children of the support. *See State ex. rel. Lara v. Lara*, 495 N.W.2d 719,722 (Iowa 1993); *In re Marriage of Bales*, 439 N.W.2d 228, 230 (Iowa App. 1989) ("A court may figure child support under the guidelines by including or considering the amount by which a parent has voluntarily reduced his or her income."). Michael must live with the economic consequences of leaving a

higher-paying job with benefits and taking a lower-paying job. The trial court was correct in denying his petition to reduce his child support obligations.

We grant Cheryl's request for attorney's fees on appeal in the amount of $500. Costs on appeal assessed to Michael.

AFFIRMED.

Streit, J., concurs; Sackett, P.J., specially concurs.

SACKETT, J. (concurring specially)

I concur specially. I do not agree with the majority finding that Michael is underemployed. However it would appear, considering his trust income, that the denial of his petition to modify was correct.