

IN THE COURT OF APPEALS OF IOWA

No. 8-303 / 97-1935

IN RE THE MARRIAGE OF LORI JAN DITZLER
AND DAVID BRADLEY DITZLER

Upon the Petition of
LORI JAN DITZLER,

Appellant,

And Concerning
DAVID BRADLEY DITZLER,

Appellee.

SEP 30 1998

Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

Lori Ditzler appeals from the district court's dismissal of her petition to modify
the parties' dissolution decree. **AFFIRMED.**

C. Jean Pendleton of Charnetski, Olson, Lacina, Pendleton & Garland, L.L. P.,
Grinnell, for appellant.

John E. Billingsley of Walker, Knopf & Billingsley, Newton, for appellee.

Heard by Cady, C.J., Vogel, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

CADY, C.J.

Lori Ditzler appeals the district court's dismissal of her petition for modification of the parties' dissolution decree. She claims the district court erred by failing to: (1) find a substantial change in circumstances occurred warranting a modification of the health insurance provisions in the decree; and (2) set child support at her former husband's earning capacity. We affirm the district court.

Lori and David Ditzler divorced in September 1993 after approximately nine years of marriage. The district court awarded Lori primary physical care of the parties' three minor children. The trial court ordered David to pay \$600 per month in child support. It deviated from the guideline amount by \$200 because David provided medical coverage for the children. The decree stated David must maintain health insurance for the children and pay any deductibles for their coverage. It also ordered the parties to be equally responsible for any uncovered medical expenses.

At the time of the dissolution, David worked as a truck driver, earning an annual income of \$37,782. David's income increased to \$45,100 at the time Lori filed the modification petition. After Lori filed the modification petition, David took a job at the Grinnell Country Club as a golf course manager. He earns \$26,000 per year at the golf course. Lori currently works as a day care provider, earning a net income of approximately \$808.

The district court dismissed Lori's modification petition finding that while there had been changes in circumstances since the decree was entered, they did not

warrant a modification. The district court found David did not change jobs in order to decrease child support, and Lori's complaints regarding the medical bills did not warrant a modification of the decree.

On appeal Lori maintains David's failure to provide proof of insurance coverage for the children and to timely pay his portion of the uncovered expenses is a substantial change in circumstances warranting a modification of the decree. She also asserts David's child support obligation should be set at his earning capacity as a truck driver rather than his actual salary as a golf course manager.

I. Standard of Review

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 the 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).

II. Medical Insurance

Courts are generally permitted to modify a dissolution decree when there has been a substantial change in circumstances. Iowa Code § 598.21(8) (1997). The

change must be more or less permanent or continuous, it must not have been within the contemplation of the original trial court, and continued enforcement of the original decree in light of the changed conditions must result in positive wrong or injustice. *In re Marriage of Vetterneck*, 334 N.W.2d 761, 762 (Iowa 1983).

Lori claims her difficulties obtaining proof of insurance coverage and receiving timely compensation for uncovered medical expenses constitute a substantial change in circumstances warranting a modification of the decree. David asserts Lori waived this argument by failing to specifically plead it in the modification petition. Alternatively, he maintains that while the parties have some communication problems concerning insurance and payment of uncovered bills, it does not warrant a modification of the decree.

We conclude Lori adequately pled her insurance complaints in the general prayer for equitable relief in the modification petition. She was clearly seeking modification of the child support provisions of the decree. While she did not specifically mention medical insurance, this is related to the child support issue. Moreover, both parties were given an opportunity to present evidence concerning the issue.

We agree with the district court, however, that Lori's complaints concerning the children's medical insurance do not amount to a substantial change in circumstances warranting a modification of the decree. The record indicates the parties are having problems adequately communicating about the children's

uncovered medical expenses, and Lori lacks a clear understanding of the terms of the coverage. While the communication difficulties are problematic, the circumstances do not warrant a modification of the decree.

III. Child Support

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). 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). When a parent voluntarily reduces income or decides not to work, it may be appropriate for the court to consider earning capacity rather than actual earnings when applying the child support guidelines. *In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 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).

Our inquiry does not merely focus on the voluntariness of the conduct responsible for the reduced earning capacity, but, significantly, focuses on the voluntariness or intent of the obligor to actually reduce income. *See Walters*, 575 N.W.2d at 743. We are concerned with those parents who reduce their income with improper intent or reckless disregard for the children who depend upon their support. *See In re Marriage of Swan*, 526 N.W.2d 320, 324 (Iowa 1995) (father did not

voluntarily resign from job and his decision to return to school was not made with improper intent); *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993) (although spouse was responsible for loss of job, there was no intent to deprive children of support or evidence of reckless disregard for welfare of children).

Lori claims David's child support obligation should be based on his earning capacity as a truck driver rather than his current job as superintendent of Grinnell Country Club golf course. David maintains the support payment should be based upon his actual income. David stated he took the job at the country club because: (1) he could be closer to his children; (2) it was his dream job; and (3) he was concerned for the future of his trucking job due to corporate restructuring.

In this case, David did not take a job at the country club with the intent to deprive his children of needed support. Additionally, his support obligation with his new position will not significantly differ from what he was ordered to pay under the original decree. David had been paying \$600 per month in support prior to taking this job.¹ His support calculated pursuant to the guidelines at his job as golf course superintendent places his support obligation at \$607. Further, we note while a parent has an obligation to provide necessary support for their children, divorce should not

¹ While Lori did not specifically object to the trial court's original child support calculation in the decree, we note the trial court should have calculated David's medical expenses in the guideline calculation rather than subtracting \$200 from the total support amount for these expenses. Nevertheless, the child support calculation based upon David's current income properly includes his medical expenses in the child support calculations.

tie a parent to a specific income level or profession. We conclude David did not voluntarily reduce his income with improper intent or reckless conduct. Thus, the self-inflicted rule does not apply. Furthermore, we properly consider his income from his current job in determining whether a modification is justified under the ten percent deviation rules. *See* Iowa Code § 598.21(9). Using this level of income, modification is not justified.

We have considered all the claims raised by Lori. We affirm the district court.

AFFIRMED.