

IN THE COURT OF APPEALS OF IOWA

No. 5-428 / 94-1228

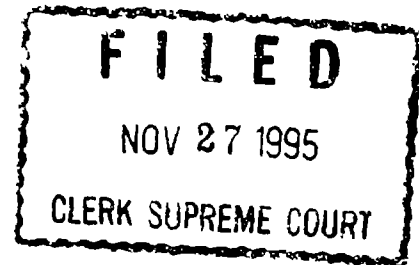
**IN RE THE MARRIAGE OF DWIGHT STRUPP
AND DIANA STRUPP**

Upon the Petition of
DWIGHT STRUPP,

Appellant,

And Concerning
DIANA STRUPP,

Appellee.



Appeal from the Iowa District Court for Keokuk County, James D. Jenkins,
Judge.

Petitioner appeals the district court's denial of his application for modification
of the parties' dissolution decree. **AFFIRMED.**

J. Terrance Denefe of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for
appellant.

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa, for appellee.

Heard by Sackett, P.J., Cady, J., and Perkins, S.J.*

*Senior judge from the Fifth Judicial District serving on this court by order of the
Iowa Supreme Court.

PERKINS, S.J.

Dwight Strupp appeals a district court ruling denying his application to modify the parties' dissolution decree. He contends: 1) the court erred in failing to reduce his support obligation; 2) the court erred in denying his request to modify the parties' arrangements for visitation transportation; and 3) the court erred in ordering him to pay \$500 toward the respondent's attorney fees. Our review is de novo. Iowa R. App. 4. We give weight to the trial court's factual findings, but we are not bound by them. Iowa R. App. P. 14(f)(7). We affirm.

I. MODIFICATION OF CHILD SUPPORT.

A decree of dissolution in the marriage of Dwight and Diana Strupp was filed on April 11, 1988. In the decree the district court concluded the income available to Dwight for personal expenses in 1987 was \$16,770. The decree required Dwight to pay \$280 per month in child support, subject to an annual COLA provision.

On March 30, 1990, a consent order was filed which modified Dwight's support obligation. Effective January 1, 1990, Dwight's support obligation was increased to \$300 per month, subject to a biennial increase of \$20 per month. As of January 1992, Dwight's support obligation increased to \$320 per month and as of January 1994, his support obligation was \$340.

In November 1993 Dwight filed an application for modification. He sought a reduction in his support obligation and a division of the visitation transportation

costs. Dwight introduced his 1988 through 1993 tax returns into evidence. He contends his income has declined significantly and he is entitled to a reduction in his support obligation. The district court found Dwight presented no good reason to explain his decrease in income and it concluded the alleged reduction had been self-inflicted and voluntary in nature. The court declined to reduce Dwight's support obligation.

There is a sufficient basis in the record to be skeptical of Dwight's allegations of reduced income. When dissolution proceedings were commenced in 1987 he completed an affidavit of financial status in which he appeared to claim to draw no income from the farm. This allegation was completely disregarded by the dissolution court in determining Dwight's available income. Dwight now contends his income has declined each year since 1988. However, his explanations for these reductions are, for the most part, vague and unconvincing, especially given the size of his farm operations and his net worth. Dwight's assertion of declining income is also inconsistent with his agreement for the entry of the 1990 consent order which increased his support obligation to \$300 a month and subjected it to biennial increases.

"Iowa case law supports the proposition that in the determination of child support or modification of a support order, a party may not claim inability to pay child support when that inability is self-inflicted or voluntary." *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993). A trial judge is in the best position to

assess the credibility of a party, and we have carefully considered the district court's findings that Dwight has voluntarily reduced his income available to pay child support. Absent a substantial change in circumstances, a reduction in Dwight's support obligation is not warranted. In affirming the finding that Dwight's level of income has been voluntarily reduced, we conclude he has failed to prove a substantial change in circumstances and affirm the district court.

II. VISITATION TRANSPORTATION.

The original dissolution decree provided Dwight would transport the parties' daughter to and from visitation. The parties' consent order modifying the decree in 1990 did not alter this arrangement. At the time of the 1994 modification Dwight continued to reside in Keokuk County and Diana lived in Des Moines.

Dwight wanted the visitation provision modified to require Diana to pay one-half of the transportation expenses or to provide one-half of the transportation. The district court concluded the increase in distance between the parties (from approximately 30 to 70 miles) did not require a modification of the visitation provisions of the decree. We agree. While it is in their daughter's best interests that Diana do everything she can to facilitate maximum visitation between the daughter and Dwight, modification of the decree is not warranted.

III. ATTORNEY FEES.

Dwight appeals the district court's order requiring him to pay \$500 of Diana's attorney fees. An award of attorney fees lies within the discretion of the trial court. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). Whether attorney fees should be awarded depends on the respective abilities of the parties to pay and the fees must be fair and reasonable. *Id.* To overturn the award, Dwight must establish the trial court abused its discretion. *Id.* We find the award in this case was equitable and was not an abuse of discretion.

AFFIRMED.