

**IN THE COURT OF APPEALS OF IOWA**

No. 1999-300 (9-530) / 99-205  
Filed February 9, 2000

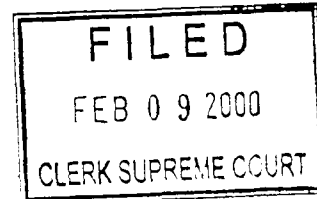
**IN RE THE MARRIAGE OF ROXANNE K. DIMMER  
AND DAVID S. DIMMER**

Upon the Petition of  
**ROXANNE K. DIMMER,**

Appellee,

And Concerning  
**DAVID S. DIMMER,**

Appellant.



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Appeal from the Iowa District Court for Dubuque County, Alan Pearson,  
Judge.

David Dimmer appeals from district court's ruling modifying a marriage  
dissolution decree. **AFFIRMED.**

Mary M. Schumacher, Dubuque, for appellant.

Amy Collins White of O'Connor & Thomas, P.C., Dubuque, for appellee.

**Heard by Streit, P.J., and Vogel, and Vaitheswaran, JJ.**

**VAITHESWARAN, J.**

**David S.** Dimmer claims the district court should not have modified his child support obligation. We affirm.

***I. Background Facts and Proceedings***

David and Roxanne Dimmer were married on October 8, 1998. They have two children, Rachel and Jillian. On July 9, 1996, Roxanne petitioned to dissolve the marriage. David filed a financial statement listing his gross annual income as \$31,812. He filed a second statement listing his gross annual income as \$31,205. The district court entered a temporary order requiring David to pay Roxanne child support of \$675 per month.

In December 1996, the parties filed a joint disclosure statement agreeing that child support should remain at \$675 in accordance with the support guidelines. On March 26, 1997, the court signed a judgment and decree to which the parties had stipulated. The stipulated decree gave the parties joint legal custody, with Roxanne assuming primary physical care. The decree listed David's gross annual income without bonus and overtime pay as \$20,090. Based on this sum, the decree required David to pay child support of \$455 per month. The decree did not contain an explanation of why David's listed income was approximately \$10,000 less than the amount set forth in the joint disclosure statement or why the final child support order deviated from the amount set forth in the guidelines and in the temporary order.

On September 18, 1998, Roxanne applied to modify child support on the ground David's bonuses and overtime rendered his income higher than the amount

~~listed in the decree.~~ The district court granted the application. This appeal followed.

## **II. Child Support**

Our review is de novo. *In re Marriage of Walters*, 575 N.W.2d 739, 740-41 (Iowa 1998). A district court is afforded reasonable discretion to determine whether modification of child support is warranted and we will not overturn its ruling unless there is a failure to do equity. *Id.*

A court may modify a child support order when there is a material and substantial change in circumstances. Iowa Code § 598.21(8) (1997). A substantial change in circumstances exists when court-ordered child support varies by ten per cent or more from the amount that would be due under the current child support guidelines. *Id.* § 598.21(9); *In re Marriage of Bolick*, 539 N.W.2d 357, 359 (Iowa 1995).

There is no question that the child support amount contained in the decree deviates by more than ten percent from the amount prescribed by the most recent guidelines. However, citing *In re Marriage of Hess*, 522 N.W.2d 861, 864 (Iowa App. 1994), David contends this rule should not apply where the parties stipulated to a lesser amount. We disagree. In *In re Marriage of Wilson* the Iowa Supreme Court overruled *Hess*, stating:

~~[t]he legislature clearly mandated that the guidelines became implicated under the ten per cent rule provided in Code section 598.21(9). There is no escape from that implication in a stipulation between the parents, even if it is ratified in the trial court decree.~~

572 N.W.2d 155, 157 (Iowa 1997). Pursuant to *Wilson* we conclude a substantial change in circumstances exists based on the ten per cent variance rule set forth in Iowa Code section 598.21(9).<sup>1</sup>

Although not necessary to our ruling in light of *Wilson*, we also agree with the district court that David's support obligation should be modified based on equitable principles. The district court here found the best interests of the children would not be served by affirming the stipulation. The court explained:

The result of reducing the respondent's stated income was to lower child support by one-third (1/3) or \$200 per month. No one introduced evidence on how this change affected the interests of the children. The marriage lasted nine years and the property distribution was roughly equal so it does not appear any more marital resources were set aside for their care than would have been awarded without an agreement to reduce the support. Given the petitioner's monthly income (both at the time of the dissolution and now) the court has trouble viewing the reduction as anything other than adverse to the children's interests.

We concur with this reasoning.

We additionally agree with the district court's conclusion that modification is warranted because the parties did not inform the decretal court of the stipulation's deviation from the guidelines. David's financial statements reflected he received bonus income of more than \$10,000 per year. The parties included that income for purposes of the temporary support calculation but deleted it in the stipulated decree. Iowa Code section 598.21(4)(a) requires a court to make a written finding

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<sup>1</sup> We do not address whether the fact-findings contained in the decree are binding on the modification court in the absence of a showing that the income changed substantially, as David does not raise the issue preclusion doctrine. *Berkley Int'l Co. v. Devine*, 423 N.W.2d 9, 12 (Iowa 1988) (requiring party to assert preclusive effect of prior adjudication at trial level); see *In re Marriage of Guyer*, 522 N.W.2d 818, 821 (Iowa 1994) (expressing no opinion whether issue preclusion would apply had the change in the parties' incomes not been substantial); cf. *In re Marriage of Roseberry*, 606 N.W.2d 606, 612 (Iowa 1999)

when deviating from the guidelines. The decree did not contain such a finding. As the district court stated:

By not presenting the variance in a straight forward fashion in the stipulated Decree there was no finding the variance was justified and appropriate. It seems likely the signing judge wasn't even aware he was acceding to the elimination of one-third of the respondent's gross annual income. In retrospect, it seems doubtful adequate ground existed to find application of the guidelines would be unjust or inappropriate.

The court concluded "[e]nforcing the agreement as made rewards incomplete and misleading disclosures to the court at the time of finalization." We agree and conclude the district court's decision to apply the guidelines was equitable.

The district court found that David's bonus income was "regular and predictable." See *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994) (stating speculative income should not be considered in determining child support). The court accordingly included the income in its calculation, applied the guidelines, and ordered David to pay \$686 per month. We conclude this award was equitable.

### **III. Appellate Attorney Fees**

Roxanne seeks an award of appellate attorney fees. Such an award rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). The district court declined to award trial attorney fees "because of the petitioner's affirmative role at the time of the original Decree in excluding the respondent's annual bonus income." We find the court's reasoning equally persuasive in considering an award of appellate attorney fees. While we are

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(holding party could not relitigate paternity issue).

cognizant of the disparities in the parties' incomes and appreciate that Roxanne can ill afford a \$2144 payment to her attorney, we are unwilling to sanction anything but full and forthright disclosures to the district court. Accordingly, we deny her request.

**AFFIRMED.**