

IN THE COURT OF APPEALS OF IOWA

No. 3-074 / 12-1286
Filed March 13, 2013

**IN RE THE MARRIAGE OF SHEILA M. HEFLEY
AND DONALD J. HEFLEY**

**Upon the Petition of
SHEILA M. HEFLEY,**
Petitioner-Appellee,

**And Concerning
DONALD J. HEFLEY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

Donald “Jamie” Hefley appeals from the district court’s ruling on his
petition to modify child support. **AFFIRMED.**

Alyssa Kenville, Fort Dodge, for appellant.

R. Thomas Price, Fort Dodge, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

In an October 2009 dissolution decree, Donald “Jamie” Hefley’s income as a self-employed contractor was found to be a “mystery.” The district court relied on Jamie’s statement at trial that he “could pay child support based on a yearly net income of \$30,000 to \$40,000” despite tax returns from 2003 through 2007 showing net losses. The court ordered Jamie to pay child support in the amount of \$1172 per month for three children, reduced to \$1041 when only two children qualify for support, and reduced to \$795 when one child qualifies. Sheila Hefley was ordered to provide the children’s health insurance coverage, for which she paid \$412 per month.

Jamie filed a petition to modify child support on February 11, 2010, submitting 2008 and 2009 income tax returns purporting to show business profits of \$2370 and \$11,679 respectively. The court wrote:

It is noted that in late 2009, [Jamie] freely acknowledged in court that he could afford child support based on a net income of \$40,000.00. Why should this court place any faith in [Jamie]’s tax returns now when [Jamie] didn’t even do so at the time of the divorce? Actually, according to [Jamie]’s returns he is now making more money than he was at the time of the divorce. In summary, this court concludes that [Jamie]’s returns are not a true measure of his income and his request for a modification of his child support obligation should be denied.

On June 16, 2011, Jamie filed a petition to modify the custody and support provisions of the dissolution decree. He sought shared custody, or in the alternative, a reduction of his child support obligation.

After a hearing, the district court denied Jamie’s request to modify the custodial provisions of the decree. The court did reduce Jamie’s child support obligation because Sheila was now able to obtain health insurance coverage for

twenty-five dollars per month,¹ but otherwise rejected Jamie's assertions that his support obligation should be reduced. The court found:

Here, by originally agreeing that his child support obligation could be based on a net income as high as \$40,000.000 Jamie in essence agreed to a monthly child support figure of \$1172.00 for three children. It would not be in the children's best interests to relieve Jamie of his agreement, even if his agreement was unwise. Further Jamie cannot show a material change of circumstances when his proof offered at the divorce hearing showed that he had negative income and his proof today shows significant improvement. This is a case that should send a message that obfuscating the facts is dangerous. Better to have been forthright at the divorce trial so that Jamie's true income could have been determined to establish whether a modification of his child support is now truly warranted.

Jamie's child support obligation was set at \$968 for three children, \$837 for two, and \$592 for one child. He now appeals, contending the district court improperly relied on his "stipulation" of an income.

The ruling by the district court properly relies on Jamie's sworn testimony offered for the express purpose of establishing the amount of child support to be paid by Jamie.² The court observed that Jamie at the dissolution trial in October

¹ The court used the figure \$28.92 per month, which is what Jamie's attorney calculated based on a proration of the cost to Sheila's paramour for coverage. Sheila testified, however, that she pays her paramour twenty-five dollars per month to have her children placed on his insurance plan.

² The court does cite to *In re Marriage of Guyer*, 522 N.W.2d 818, 820 (Iowa 1994), where the parties had stipulated to certain incomes. In *Guyer*, Curtis attempted to avoid a modification of support by asserting that his income at the time of the dissolution was higher than he had reported and therefore the change in his income since then did not warrant an increase in his support obligation. 522 N.W.2d at 820. The court rejected Curtis's request:

We refuse to do as Curtis asks. The evidence shows that when the dissolution decree was entered, neither Carla nor the court was aware that Curtis' income had increased from the time he filed his affidavit. Not surprisingly, Curtis made no effort to inform Carla or the court of this change. Curtis benefited from Carla's lack of knowledge once. We will not allow him to benefit a second time. Therefore, we use the income

2009 testified, under oath, he was able to pay child support based on a net \$40,000 income;³ did not appeal from the decree wherein the court used that income figure; and his current evidence shows he is making more income, at least more reported income, now than he did when child support was set on the basis of his testimony. Based upon our de novo review of the modification ruling, see Iowa R. App. P. 6.907, and giving weight to the trial court's findings, particularly as to witness credibility, see Iowa R. App. P. 6.904(3)(g), we affirm without further opinion. See Iowa Ct. R. 21.29(1)(a), (b), and (e).

AFFIRMED.

figure contained in the affidavit he filed in the dissolution action because it was the basis for the child support awarded in the original decree.
Id. at 820-21.

We find no error in the district court holding Jamie to his original testimony, which was the basis for the child support awarded in the dissolution decree.

³ Jamie agreed with his attorney during questioning at the 2009 dissolution trial that a reasonable resolution to the child support issue was that he "could go out and get a job for 40 some thousand dollars," and that the "30 to \$40,000 is not giving you credit for all of your [business] depreciation so that the Court can find some reasonable income figure to give a fair amount of child support for your children."

The district court stated to Jamie that "you'll be the first one that I've had in my court in almost eighteen years who would come in and say, Judge, I don't make a dollar. I don't make a dime, but I'll agree I'll pay child support based upon a \$42,000 income. Now that seems fishy to me." Jamie's response, "Mm-hmm."