

IN THE COURT OF APPEALS OF IOWA

No. 8-762 / 07-1796
Filed October 15, 2008

**IN RE THE MARRIAGE OF GINA MARIE PINT
AND DAVID PATRICK PINT,**

**GINA MARIE PINT n/k/a/
GINA MARIE OBERBROECKLING,**
Petitioner-Appellee,

And Concerning

DAVID PATRICK PINT,
Respondent-Appellant.

Appeal from the Iowa District Court for Buchanan County, James C. Bauch, Judge.

David Pint appeals the district court's order increasing his child support obligation and refusing to modify his dissolution decree to change his son's last name. **AFFIRMED.**

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellant.
Robert Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C.,
Dubuque, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

The decree dissolving the marriage of David Pint and Gina Oberbroeckling issued on February 6, 2001, and incorporated the parties' stipulation. David and Gina agreed to share joint legal custody of their child, who was born in 2000, and further agreed to place physical care with Gina. The stipulation stated that the parties agreed to cooperate in changing the child's last name to Hoeger-Pint.¹ David was ordered to pay to Gina \$210.58 per month for child support.

On May 26, 2006, David filed a petition for modification of decree of dissolution of marriage, seeking increased visitation with the child.² On June 30, 2006, Gina filed a counterclaim to David's petition for modification requesting an increase in David's child support obligation. On June 25, 2007, David amended his petition to modify, asking that the court change the child's last name from Hoeger-Pint to Pint.

The district court declined to disturb previously entered orders establishing the child's last name as Hoeger-Pint. The district court also ordered that David's child support payments be increased to \$447.20 per month. David appeals the district court's order, arguing that: (1) the child's last name should be changed to Pint; and (2) his child support obligation should not have been increased.

II. Standard of Review

Because this is an action in equity, our review is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, especially when

¹ Hoeger is Gina's maiden name. She has since remarried and taken her new husband's last name.

² Visitation is not an issue on appeal.

considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

Modification of a custody decree requires a material and substantial change in circumstances that make it equitable for other terms to be imposed. *Mears v. Mears*, 213 N.W.2d 511, 514-15 (Iowa 1973). The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of evidence. *Thayer v. Thayer*, 286 N.W.2d 222, 223 (Iowa Ct. App. 1979). “The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity.” *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa Ct. App. 1987).

III. Name Change

David argues that the district court erred in refusing to change the child’s last name from Hoeger-Pint to Pint. The parties’ dissolution decree specifically stated that the parties “agree to cooperate in changing the last name of the child. It is agreed that the last name of the child shall be changed to Hoeger-Pint and [David] shall pay any cost associated with the name change.”

David has failed to show a substantial change in circumstances that would allow the district court to change the child’s name. The only changed circumstance that David alleges is that Gina has remarried and has taken her husband’s last name, Oberbroeckling, so that she no longer retains the surname, Hoeger, used in her child’s hyphenated last name.

Even after considering Gina’s decision to drop her maiden name, we find that it is still equitable for the district court to require the child to continue to use

the last name Hoeger-Pint as stipulated in the divorce decree. The evidence suggests that since 2001 two last names, Hoeger-Pint and Hoeger, have been used for the child. We believe that a decision to change the child's last name to Pint would complicate the situation, and is not supported by the evidence. It would be in the child's best interests for both parents to use the last name Hoeger-Pint for the child, as they previously agreed. We do not find any evidence that supports David's claim that Gina sought to hyphenate the child's name as a way to distance the child from David. We agree with the district court and decline to disturb previous court orders that established the child's last name as Hoeger-Pint.

IV. Child Support Modification

David also argues that the district court erred in increasing the amount of his child support obligation without a substantial change in circumstances. A substantial change in circumstances exists when a support obligation, calculated using the present incomes of the parties, varies by at least ten percent from the support under the existing court order. Iowa Code § 598.21C(2)(a) (Supp. 2005).

The district court's opinion includes a careful analysis of the evidence regarding David's income. While David's 2006 tax returns show a net income of roughly ten thousand dollars per year, the district court suggested that figure may be unreliable, given the extensive deductions claimed. The district court found that David "deducts substantial amounts for depreciation and runs all of his household expenses through the business." The district court evaluated David's expenses, spending habits, earning potential, and his estimate of a \$40,000 annual gross income. The district court chose to use David's gross profit from

his 2006 tax return, \$32,894, as his gross annual income in calculating child support. This results in a monthly child support payment of \$447.20. While the record does not reveal the income figures on which the original, stipulated, child support was calculated, the new obligation varies by more than ten percent from David's current obligation of \$210.58 per month. This is a substantial change in circumstances that merits modification. We find the district court's decision is equitable to both parties and is based on the record made at trial. We therefore find that the district court did not err in increasing David's child support obligation.

AFFIRMED.