

IN THE COURT OF APPEALS OF IOWA

No. 9-304 / 08-1791

Filed June 17, 2009

STACEY L. BAYSINGER and STATE OF IOWA,
ex rel. MERCEDES LEE BAYSINGER,
Petitioners-Appellees,

vs.

BILLY CHARLES VAN PELT,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II,
Judge.

Respondent appeals the district court decision denying his request to
modify his child support obligation. **AFFIRMED AS MODIFIED.**

Eric R. Eshelman, Des Moines, for appellant.

Michelle Jungers Synarong, Iowa Legal Aid, Des Moines, for appellee
Baysinger.

Shannon Pagel, Child Support Recovery Unit, Des Moines, for appellee
State.

Considered by Vogel, P.J., and Miller, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.

Billy Van Pelt and Stacey Baysinger are the parents of Mercedes, who was born in 1997. In 1998 a support order was entered requiring Billy to pay \$402 per month for the support of his child. On July 31, 2007, Billy filed an application seeking a reduction in his child support obligation.

Billy has a high school diploma and obtained a welding certificate from Des Moines Area Community College. In 1994 he earned about \$32,000 at Gordon Wholesale. Billy became addicted to methamphetamine, and in 2001 was sentenced to prison on drug charges. He was released on parole in 2005. Billy began living rent-free with his father, Charles Van Pelt. Billy works for his father at Carlisle Auto Recyclers, where he is paid \$100 per week. Out of Billy's pay, Charles sends \$46.17 to child support recovery, and Billy is paid the balance after taxes, \$46.18.

Stacey is disabled and receives \$574.60 per month in Social Security Disability benefits. Mercedes also receives twenty-six dollars each month from Social Security as a derivative benefit.

The district court denied Billy's request to modify his child support obligation. The court found "Billy has failed to show a substantial change in circumstances warranting a change or modification in his child support obligation." The court ordered Billy to pay \$1000 towards Stacey's trial attorney fees. The court denied Billy's post-trial motion filed pursuant to Iowa Rule of Civil Procedure 1.904(2). Billy now appeals.

On our de novo review, Iowa R. App. P. 6.4., we agree with the district court's conclusion that Billy has failed to show a substantial change of circumstances. See *In re Marriage of Vetterneck*, 334 N.W.2d 761, 764 (Iowa 1983) (holding a decree may be modified only if there has been a substantial change of circumstances). Generally, a party may not seek a reduction of child support when the party's inability to pay is self-inflicted or voluntary. *In re Marriage of McKenzie*, 709 N.W.2d 528, 533 (Iowa 2006). Billy made very little effort to increase his income. He had made only a few inquiries about getting a better paying job. Billy failed to show his earning capacity had decreased.

Billy claims Stacey is not entitled to attorney fees because the original support order was entered under Iowa Code chapter 252F (1997). He correctly points out that chapter 252F does not provide for attorney fees. In the absence of a statute or contract authorizing attorney fees, we do not generally award attorney fees. See *Capitol Fund 85 Ltd. P'ship v. Priority Sys., L.L.C.*, 670 N.W.2d 154, 160 (Iowa 2003). We determine the district court improperly awarded attorney fees in this case, and modify to reverse the award of \$1000 in attorney fees to Stacey.

Billy claims the district court should have provided for a yearly alternation of the tax exemption for the parties' minor child. Billy testified that he did not have sufficient income to require him to file an income tax return. Under these circumstances, we conclude Billy should not be provided with the tax exemption for the minor child every other year.

We affirm the decision of the district court, except that we have eliminated the award of attorney fees. Costs of this appeal are assessed to Billy.

AFFIRMED AS MODIFIED.