IN THE COURT OF APPEALS OF IOWA

No. 9-531 / 08-1247
Filed September 17, 2009

IN RE THE MARRIAGE OF RENEE M. TRIMBLE AND JOHN A. TRIMBLE

Upon the Petition of
RENEE M. TRIMBLE
n/k/a RENEE M. CHESMORE,
Petitioner-Appellee,

And Concerning
JOHN A. TRIMBLE,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley John Harris, Judge.

John Trimble appeals the district court's denial of his application to modify his child support obligation established in the decree dissolving his marriage to Renee Trimble. **AFFIRMED.**

David A. Roth of Gallegher, Langlas & Gallagher, P.C., Waterloo, for appellant.

Timothy J. Luce of Anfinson & Luce, P.L.C., Waterloo, for appellee.

Considered by Sackett, C.J., Vogel, J., and Huitink, S.J.*

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

HUITINK, S.J.

John Trimble appeals following the district court's denial of his application to modify his child support obligation established in the 2001 decree dissolving his marriage to Renee Trimble. John contends a decrease in his earning capacity supported a reduction in his child support and the court erred when it determined he had voluntarily reduced his income. We affirm.

I. Background Facts and Proceedings.

John and Renee Trimble[1] divorced in 2001. At that time, John's net monthly income was approximately $1950 and Renee's net monthly income was approximately $1550. Pursuant to the parties' stipulation, the district court ordered John to pay Renee $586 in monthly child support for the parties' two minor children, Angel, born in August 1994, and Crystal, born in November 1998.[2] The parties further stipulated they should have joint legal custody and Renee should have physical care. John was provided reasonable and liberal visitation rights.

Renee has since remarried. In 2006 she moved with the children and her new husband to LeRoy, Illinois, more than four hours away from John's residence in Independence, Iowa. Following Renee's move, John filed an application for modification to determine whether Renee's move would be "allowed." Following a hearing, the court entered an order that continued the parties' prior custody and placement arrangements, but altered the visitation schedule to allow John fewer visits for longer durations (one extended weekend

[1] Renee Trimble is now known as Renee Chesmore.
[2] Angel is Renee's biological daughter from a previous relationship, born a month after John and Renee met. John later adopted Angel shortly before the parties divorced.

each month and six consecutive weeks each summer). For the monthly visits, the parties were to exchange the children halfway between their residences at 6 p.m. on Thursday and 6 p.m. on Sunday of the noted weekend (or Friday and Monday). The court did not alter John's child support obligation. John eventually became delinquent on his monthly child support payments, and in July 2007 the Child Support Recovery Unit (CSRU) began efforts to collect the delinquency through mandatory income withholding.

Thereafter, John filed an application to modify his child support obligations. At the hearing on the modification in June 2008, the facts were basically undisputed. According to the record, when child support was ordered in 2001, John was employed part-time at the United States Postal Service and seasonally with a tax service. John testified that when Renee and the children moved to Illinois and John's visitation changed, however, he made efforts to change his employment to enable him to spend more time with the children. He was unable to manage his previous employment to allow him to exercise visitation ordered by the court and was eventually forced to resign after having used up all his leave in order to make the visitation pick-up and drop-off times scheduled in the court's order.

John admitted, however, that he had not requested a change to the visitation pick-up and drop-off times by an hour or two that may have accommodated his employment. Ultimately, John took a job involving transferring vehicles and towing his car behind him. John testified he took the position because the transportation took him near where the children live and allowed him to maximize visitation with them. John lost money in the first year of

his new employment venture, but testified that he was expecting to make more money in the future.

Following the hearing, the district court entered a modification order on July 8, 2008. The court did not find a substantial change in circumstances with regard to John's child support obligation and ordered it to remain at $586 per month. As the court stated:

> There is no change in circumstances. The court finds the Respondent's reduction in income since 2006 has been voluntary. Using [Respondent's] 2006 income of $30,499.70 in the calculations would result in a 9% variance. Therefore support will remain as previously ordered.

John now appeals.

II. Scope and Standard of Review.

We review child support modifications de novo. Iowa R. App. P. 6.4; *In re Marriage of Nielsen*, 759 N.W.2d 345, 348 (Iowa Ct. App. 2008). We give weight to the district court's fact findings, especially when we consider witness credibility, but we are not bound by those findings. Iowa R. App. P. 6.4(6)(*g*). "We recognize that the district 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 Walters*, 575 N.W.2d 739, 741 (Iowa 1998) (quoting *In re Marriage of Vetternack*, 334 N.W.2d 761, 762 (Iowa 1983)).

III. Merits.

John argues the district court should have modified his child support obligation. Child support provisions of a dissolution decree may be modified when there has been "a substantial change in circumstances." Iowa Code

§ 598.21C(1) (Supp. 2007). The party seeking modification must establish the change in circumstances by a preponderance of the evidence. *In re Marriage of Jacobo*, 526 N.W.2d 859, 864 (Iowa 2005). Such change must be more or less permanent and continuous, not temporary. *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006). The court may consider a number of factors in addressing a modification of child support, including "changes in the employment, earning capacity, income, and resources of a party." Iowa Code § 598.21C(1)(a).

John contends the court erred in determining there was no substantial change in circumstances and in equating his earning capacity to his previous income. John alleges he took a lesser paying job to allow him to spend more time with his children.[3] He argues he did not reduce his income with improper intent and it should not be considered a voluntary reduction in earning capacity. Renee does not dispute the fact that John's current income from his vehicle transportation employment is less than what he previously earned part-time with the United States Postal Service and seasonally with the tax service. She contends, however, that his child support should not be decreased because his change in employment was not necessary to facilitate his visitation with the children. Renee further argues John's decision to change his employment has left him unable to provide for the needs of his children and that he has in effect shrugged off his responsibilities to support the children.

We have carefully reviewed the record and agree with the district court that there was no substantial change in circumstances to support a modification

---

[3] John analyzes several cases in his brief to this court; however, we find those cases differ factually from the instant situation and offer little support to John's argument.

in John's child support obligations. John chose to take a new job that currently pays less than his prior income, but he urges he accepted the position in order to be closer to his children and to maximize visitation. Although we note that John may have a valid argument as to whether the district court erred in determining his employment change was "voluntary" under the circumstances in this case, we need not evaluate that issue.

The record shows that although John lost money in the first year of his new employment venture, he expects to make more money in the future. John's own testimony supports this fact. A change in circumstances must be more or less permanent and continuous, not temporary. *Pals*, 714 N.W.2d at 646. As John testified, he expects his salary to increase in the future. We cannot therefore find the decrease in John's salary is permanent and continuous. John has failed to establish a substantial change in circumstances by a preponderance of the evidence. *See, e.g.*, *Jacobo*, 526 N.W.2d at 864. We affirm.

AFFIRMED.