

**IN THE COURT OF APPEALS OF IOWA**

No. 9-797 / 08-2037  
Filed November 12, 2009

**IN RE THE MARRIAGE OF SHANNON MICHELLE SEU  
AND MANH LHY SEU**

**Upon the Petition of  
SHANNON MICHELLE SEU,**  
Petitioner-Appellee,

**And Concerning  
MANH LHY SEU,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Warren County, Gary G. Kimes,  
Judge.

Manh Seu appeals from the district court's denial of his application to  
reduce his child support payments to his former wife, Shannon Seu. **AFFIRMED.**

Donna Beary, Des Moines, for appellant.

Roscoe Ries, Des Moines, for appellee.

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

**VOGEL, P.J.**

Manh Seu appeals from the district court's denial of his application to reduce his child support payments to his former wife, Shannon Seu. As we agree with the district court there was no substantial change in circumstances warranting a reduction, we affirm.

The original dissolution of marriage decree was entered on October 5, 2007, after Findings of Fact and Conclusions of Law were filed June 13, 2007. Manh then petitioned for modification on March 28, 2008, claiming his net income had dramatically declined. The matter came on for hearing on September 26, 2008.

We review modification of child support orders de novo. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999). Nevertheless, "the district court has reasonable discretion in determining whether modification is warranted, and we will not disturb that discretion unless there is a failure to do equity." *Id.* at 565 (citing *In re Marriage of Vetternack*, 334 N.W.2d 761, 762 (Iowa 1983)). A party seeking modification of child support orders must prove there has been a substantial change in circumstances of the parties since the entry of the dissolution decree. *Id.* at 564-65.

On November 16, 2006, Shannon filed the original petition for dissolution. Manh owns a cleaning service which reported gross income in 2006 of \$100,003, and net income of \$57,724. For the first time since the parties were married in 1993, Manh chose to report his company's income for 2006 through a federal income tax Form 1065, partnership return, with Shannon as a fifty-percent

partner. The Form K-1 then reflected Manh's and Shannon's net income from the partnership each to be \$28,862. On June 13, 2007, the decretal court found:

Always before the business income was reported on a Schedule C as a sole proprietorship owned by Manh. Although Manh and his tax preparer, who incidentally has prepared the parties' tax returns for the last nine years, claim that the change in filing status results from increased participation by Shannon, the Court is not persuaded that that is the reason for the change. The more likely reasons for the change were to transfer in excess of \$4000.00 of Social Security tax liability to Shannon and to reduce Manh's income for the purpose of calculating child support. Financial experience prior to a dissolution proceeding is a far better indicator of future income than speculation based on what has happened during the short period that the dissolution proceedings are pending.

Finding Manh's actual net profit from his business to be \$57,724, child support was then set at \$1218 per month for the parties' three minor children. Manh did not appeal from that decree.

The modification court found the gross income from Manh's business actually increased in 2007, exceeding \$102,000. As reflected on his income tax form Schedule C, Manh reported \$102,422 in gross income, and \$79,279 in expenses, netting him \$23,143. It is this purported reduced income upon which Manh seeks to lower his child support obligation.

Manh's testimony at trial was sketchy as to his income and expenses, and he was either unable or unwilling to produce requested supporting documents to Shannon's counsel prior to trial. On our review of the testimony, it is clear that Manh pays his other financial obligations, whether business or personal, ahead of paying for the care of his children. It is also clear that his record keeping system hindered the district court from discerning Manh's actual net income.

On appeal, our task is equally difficult. Neither the decretal court nor the modification court placed any credibility on Manh's reported net income. Manh's own testimony acknowledged that during the marriage, Shannon acted as a "fill-in" when Manh needed extra help at his business. For that limited help, he attributed one-half of the business's 2006 gross income to Shannon. On modification, Manh testified that he had to make up for the loss of Shannon's help by hiring and paying his brother \$37,740 in 2007. The district court simply found this explanation not credible, in spite of Manh's production of a Form 1099 showing nonemployee compensation to his brother. We agree. While income tax forms are generally a reliable source to utilize in assessing a person's income, it appeared to the district court and to us that in an effort to reduce his child support obligation, Manh was able to manipulate his tax returns to minimize his actual net income. Iowa Code § 598.13 (2007) (stating that parties to a dissolution are required to make a full and fair disclosure of their financial status); *In re Marriage of Will*, 602 N.W.2d 202, 204 (Iowa Ct. App. 1999) (stating completed federal and/or state income tax returns are the best evidence of income and tax liability); *In re Marriage of Williams*, 421 N.W.2d 160, 164 (Iowa Ct. App. 1988) ("A party who has not been fair and accountable with property under his or her control during the dissolution process must be charged accordingly.").

Manh testified in vague terms to money he was repaying to both his brother and a sister and was unable to track his income and expenses, or produce records to substantiate his claims. His 2008 projected gross income from his business continued to rise above both the 2006 and 2007 levels. We

agree with the district court there is no credible evidence upon which to find a substantial change of circumstances, such that Manh's child support obligation should be reduced.

Shannon requests attorney fees on appeal. We have discretion in awarding appellate attorney fees. *In re Marriage of Krone*, 530 N.W.2d 468, 472 (Iowa Ct. App. 1995). Whether attorney fees should be awarded depends on the respective abilities of the parties to pay and whether the party making the request was obligated to defend against the district court's decision on appeal. *Id.* Having considered the appropriate factors, we award Shannon \$1000 in appellate attorney fees. Costs on appeal assessed to Manh.

**AFFIRMED.**