FILED
FEB 25 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WILLIAM J. BLACK AND KAREN H. BLACK

Upon the Petition of)
WILLIAM J. BLACK,)
Petitioner-Appellant,) Filed February 25, 1987
And Concerning)
KAREN H. BLACK,) 6-394
86-103
Respondent-Appellee.)

9

Appeal from the Iowa District Court for Jackson County (No. D-4-1161) - *James R. Havercamp*, Judge.

Petitioner husband appeals from an order modifying the parties' original dissolution decree. **AFFIRMED.**

Mary Browne McCuskey of Clemens & King, Dubuque, and Deborah S. Roberson of Roberson & Roberson, Maquoketa, for petitioner-appellant.

Glenn Bartelt of Schoenthaler, Schoenthaler, Roberg & Bartelt, Maquoketa, for respondent-appellee.

Considered by Donielson, P.J., and *Hayden and* Sackett, JJ.

DONIELSON, P.J. **10**

Petitioner husband appeals from an order modifying the parties' original dissolution decree. The petitioner contends the trial court erred: (1) in failing to reduce the amount of his child support obligation to offset his increased tax liability due to respondent wife's sale of the parties' Nebraska home; and (2) in failing to expand his visitation rights following respondent's decision to move to Texas, thereby limiting petitioner's visitation rights and increasing the costs of visitation. The respondent asserts the trial court erred in not requiring the petitioner to pay the April and May 1984 house payments on the parties' Nebraska home. We affirm.

The marriage of petitioner, William Black, and respondent, Karen Black, was dissolved by decree on June 4, 1984. The final decree incorporated a stipulation agreement signed by both parties. The stipulation gave William and Karen joint custody of their three minor children, with physical custody residing with Karen subject to William's visitation rights. The stipulation also awarded the parties' home in Papillion, Nebraska, to Karen and the parties' Maquoketa home to William. William also agreed to pay monthly child support of $125. William additionally agreed to make the house payments on the parties' Nebraska home so long as Karen resided in the home, and William had an obligation to pay child support. William was to receive the income tax deduction for the interest he paid on the Nebraska house payments.

In July of 1985, Karen and the children moved to Irving, Texas, a suburb of Dallas. The parties' stipulation provided that if Karen moved out of the Nebraska house, the amount of the monthly mortgage payments would be added to William's monthly child support obligations. Karen sold the Nebraska home and William lost his income tax deduction for the mortgage interest.

11

Both Karen and William filed applications to modify the parties' original dissolution decree. In its order for modification, the trial court ruled: (1) that Karen was responsible for the April and May 1984 house payments on the Nebraska home, while William was responsible for the June, July, and August 1984 payments; (2) that William's monthly child support obligations be increased from $125 to $580 per month pursuant to the stipulation agreement; and (3) that William's visitation rights would not be substantially expanded or modified.

Because dissolution proceedings are equitable in nature, our scope of review is de novo. Iowa R. App. P. 4. While we give weight to findings of fact, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

William first contends that the trial court erred in failing to reduce the amount of his child support obligation to reflect his increased tax liability due to Karen's sale of the Nebraska home. William additionally points out that Karen's income has increased and also claims that Karen's living expenses in the Dallas area are nearly equivalent to that of Omaha. William therefore argues that his child support obligations should be decreased. We disagree.

Under Iowa law, in order to obtain a modification of a provision of a divorce decree for child support, or those related to such provisions, the party seeking modification must show that there has been a substantial change in circumstances since the entry of the original decree. In re Marriage of Habben, 260 N.W.2d 401, 403 (Iowa 1977); Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974). Such change in circumstances must be substantial, and such a change must not have been within the contemplation of the trial court when the earlier decree was entered. State Dep't of Social Services, Cedar County ex rel. Brecht v. Brecht, 255 N.W.2d 342, 346 (Iowa 1977). Such change must also be permanent and

continuous, not temporary. In re Marriage of Meyer, 347 N.W.2d 681, 683 (Iowa Ct. App. 1984).

In the present case, we believe that the possibility of Karen's moving from the Nebraska home and selling it, thereby resulting in William losing his tax deduction, was within the contemplation of the trial court at the time the original decree was entered. The stipulation which was signed by both parties and incorporated into the original decree provides in pertinent part:

> Beginning with the date of this Stipulation and continuing during the time that Karen lives in the house and Bill has an obligation to pay child support, Bill shall assume the indebtedness thereon, shall pay and discharge such indebtedness as it comes due, including the escrow for insurance and real estate taxes, and shall hold Karen *harmless from payment* of the same. If Bill's obligation to pay the mortgage payments on the house ends because Karen is no longer living in the house, the amount of the monthly mortgage payment that Bill had been paying shall be added to and shall increase the amount of the monthly child support payment to be paid under paragraph 4 hereof.

Thus the parties agreed that if Karen stopped living in the house the amount of the mortgage payment would be shifted onto the amount to be paid Karen for child support. The stipulation is silent, however, as to any provision concerning the income tax consequences should Karen move from the Nebraska home.

In construing stipulations, we note that a stipulation is entitled to all the sanctity of an ordinary contract. Graen's Mens Wear v. Stille-Pierce Agency, 329 N.W.2d 295, 300 (Iowa 1982). Because a stipulation is in essence a contract, we must apply the cardinal principle that the intent of the parties must control. Iowa R. App. P. 14(f)(14). "To this end, the stipulation should be interpreted with reference to its subject matter and in light of the surrounding circumstances and the whole record . . . ." Graen's Mens Wear, 329 N.W.2d at 300.

It is apparent from the record that both parties intended William to receive the tax deduction for interest paid on the Nebraska home so long as Karen resided

there and William made mortgage payments on the home. It is also apparent, however, that the parties recognized that Karen may decide in the future to no longer reside in that home. Since Karen was given title to the home, it was certainly within the contemplation of the trial court and the parties that Karen may someday decide to sell the home, resulting in William losing his tax deduction. William, an experienced businessman, certainly was aware of the tax consequences should Karen move from the home, yet no provision whereby he would be able to offset the loss of the tax deduction against the child support payments was even incorporated into the decree. We find the language of the stipulation incorporated in the original decree concerning child support to be clear and unambiguous, and we give the language used by the parties its ordinary meaning. Home Federal Sav. and Loan Ass'n of Algona v. Campney, 357 N.W.2d 613, 617 (Iowa 1984). We believe the trial court did not err in refusing to reduce the amount of William's child support.

Nor do we believe that Karen's increase in salary justifies a reduction in William's child support payments. At the time of the decree Karen was unemployed, but expected "to have employment in the near future at the wage rate of $8.95 an hour." At the time of the modification hearing and pursuant to the financial affidavit filed by Karen, Karen, working as an R.N. in a hospital in Dallas, earned a gross monthly wage of $1,863, or approximately $22,356 per year. William, however, also received a 5% raise, his income increasing from $30,000 to $31,500, and expected a 4% raise this year. William thus evidences a superior ability to pay child support, and we believe he should substantially contribute to the support of his children.

We further note that, notwithstanding Karen's testimony that the cost of living in Omaha is comparable to that of Dallas, the cost of living in one of the largest metropolitan areas in the nation is certainly greater than that

of living in Omaha. Karen, at the present time, is renting a home for approximately $600 per month, whereas the mortgage payments on the home in Nebraska were $478 per month. The costs of transportation, education, and entertainment are certainly greater in Dallas. Additionally, as the children grow older Karen's financial needs will necessarily increase, as will the educational, clothing, and entertainment needs of the children. We therefore hold that William has failed to show a material change in circumstances requiring a modification in child support and that William's child support payments of $598 per month are just and equitable under the circumstances.

William also contends that the trial court erred in failing to expand his visitation rights following Karen's decision to move to Dallas. William argues that as a result his visitation rights have been reduced and his costs of visitation increased. We disagree.

The original stipulation agreed to by the parties provided that William's visitation would consist of every other two or four week periods during the summer, plus all of the Thanksgiving and spring or Easter breaks. Bill was to have visitation in Omaha on Christmas Eve, Karen was to have the children on Christmas Day, and then William was to have the children for the remainder of Christmas break in Maquoketa. The trial court modified the provisions for visitation by providing that William's Christmas visitation was to be exercised in Irving, Texas, and that summer visitation was to begin the period one week subsequent to summer recess and end two weeks prior to the commencement of school in the fall.

We find the modification of visitation to be equitable under the circumstances. It is well settled that it is in the best interests of a child of divorce to maintain meaningful relations with both parents. In re Marriage of Leyda, 355 N.W.2d 862, 866 (Iowa 1984); In re Marriage of Bolin, 336 N.W.2d 441, 445

(Iowa 1983). Indeed, our decisions emphasizing the importance of such relationships are codified in Iowa Code section 598.41 (1985), which provides that the court shall grant, in the best interests of the child, liberal visitation so as to ensure an opportunity for the maximum continuing physical and emotional contact with both parents.

We also recognize, however, that due to the ever-increasing mobility of our society, parents who are divorced may inevitably move far away from each other, making it more difficult for the parent without physical custody to exercise visitation. In the present case, the trial court, in an effort to ensure that William was allowed the greatest possible visitation, modified the visitation provisions of the original decree by granting William extended visitation rights during school's summer recess. The Thanksgiving, Easter, and Christmas vacation visitation provisions were not changed. Though it may be more inconvenient for William to travel to Dallas rather than Omaha, and necessarily more costly, we find that under the circumstances of this case, the trial court's modification of William's visitation rights was equitable, especially in light of the fact that both parties must share equally in the increased travel expenses.

Karen also argues on appeal that the trial court erred in requiring her to pay the April and May mortgage payments while requiring William to pay the June, July, and August house payments. Karen contends that pursuant to the stipulation decree dated March 21, 1984, William was to assume all house payments subsequent to that date. Karen, however, has filed no cross-appeal regarding this issue.

A party's failure to cross-appeal from an adverse trial court ruling renders consideration of such matters beyond our jurisdiction to adjudicate such claims and precludes granting of more favorable relief on appeal. Anthony v. State, 374 N.W.2d 662, 664 (Iowa 1985). Because we have today rejected William's

claims for modification, Karen may therefore not seek a more favorable judgment without having filed a cross-appeal.

AFFIRMED.