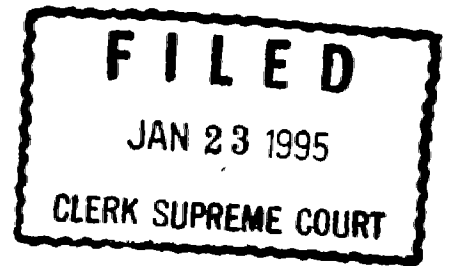


IN THE COURT OF APPEALS OF IOWA

No. 4-554 / 94-799



IN RE THE MARRIAGE OF LELAND FELDERMAN
AND CHRISTLE FELDERMAN

12/10/94

Upon the Petition of
LELAND FELDERMAN,

Appellee,

And Concerning
CHRISTLE FELDERMAN,

Appellant.

Appeal from the Iowa District Court for Dubuque County,
Alan L. Pearson, Judge.

The respondent appeals from the district court's
modification of the custody and child support provisions of
the parties' dissolution decree. **AFFIRMED.**

Mark R. Lawson, Maquoketa, for appellant.

Robert L. Sudmeier of Fuerste, Carew, Coyle, Juergens &
Sudmeier, P.C., Dubuque, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

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HUITINK, J.

Christle Felderman appeals the district court's modification of her dissolution decree which granted custody of her two older children to Leland Felderman. Christle also appeals the district court's decision to place her youngest child in the physical custody of her parents. We affirm.

Leland and Christle Felderman's marriage was dissolved in February 1991. Christle was granted physical custody of the parties' two children, Katie, born December 1985, and Michael, born August 1988.

In October 1993 Leland filed for modification of custody and temporary injunctive relief, requesting the court restrain Christle from approaching or contacting him or the children. Christle's mother, Marta Romer, also filed a petition in equity and for temporary injunctive relief, requesting custody of Eric Davis, born July 1991, who was Christle's child from another relationship. Eric's father is unknown. Both parties claimed Christle neglected the children and was exposing them to inappropriate situations. The court granted the requested relief to both parties.

At trial, Christle's paternal aunt (Lee Davis), foster mother (Patricia Goodall), and adoptive mother (Marta Romer) each testified as to the disarray and filth of Christle's mobile home. Leland and Lee also testified the children were originally well-adjusted and happy but that

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they became more unstable and developed behavioral problems while in Christle's care.

Other testimony revealed Christle had lived with several different men since the entry of the dissolution decree. She had lived in four different residences and was evicted from two residences. Her current boyfriend, Roger Russell, lived with Christle and the children in a mobile home.

The district court found Christle and Roger provided untruthful testimony regarding their finances, and it found they were not credible witnesses. The court concluded it was in the best interests of Katie and Michael to award Leland custody. The district court also concluded Christle's parents should be awarded physical custody of Eric. Christle was ordered to pay \$100 per month in support for Katie and Michael and \$50 per month for Eric.

Our review in equity cases is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we do give them weight, particularly where the credibility of the witnesses is implicated. Iowa R. App. P. 14(f)(7).

The party who wishes to change the custodial provisions of a dissolution decree must establish by a preponderance of the evidence that the conditions since the decree was entered have changed, both materially and substantially, so that it is in the best interests of the children to make the requested change immediately. In re Marriage of

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Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citation omitted). The parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. Id. This burden stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons. Id.

Leland is a dairy farmer and has a net monthly income of \$1215. Leland, his parents, and the Romers all live within the same school district, which allows the children to spend time with both sets of grandparents. He has a good relationship with the Romers. Leland also testified he supports Christle's relationship with the children.

Our de novo review leads us to conclude Leland has shown he can best minister to Katie and Michael's needs. We find Leland can provide a more stable home than Christle. He has shown that he will encourage the children's relationship with Christle as well as their brother Eric. It is in Katie's and Michael's best interests to transfer their primary physical custody to Leland. The district court is affirmed on this issue. We now turn to the custody of Eric.

Our first and foremost consideration in custody determinations is the long-term best interest of the child. Iowa R. App. P. 14(f)(5). Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. In re Marriage of Bartlett, 427 N.W.2d 867, 877 (Iowa App. 1988) (citation omitted).

There is a presumptive preference for parental custody. In re Mann, 293 N.W.2d 185, 190 (Iowa 1980). However, parties other than parents may be granted custody if the parents are clearly unsuitable. In re Marriage of Wolf, 509 N.W.2d 736, 737 (Iowa 1993) (citations omitted).

In this case there is overwhelming evidence showing Christle is unsuitable to be custodian of Eric. The record shows she failed to adequately supervise her children. The home was filthy, with dirty dishes and molding clothes left lying around the trailer. Christle often locked herself in the bedroom with Roger, leaving Katie in charge of feeding and dressing Michael and Eric. Christle's behavior demonstrates she places her interests above those of her children. Clearly it is not in Eric's best interests to remain in this environment.

This evidence is sufficient to overcome the presumption that siblings should not be separated. In re Marriage of Will, 489 N.W.2d 394, 398 (Iowa 1992). The only way the children can remain together is if they remain in Christle's custody. The evidence shows this is not in the best interests of the children. The circumstances of this case demonstrate that separation of the children will best promote their long-term interests.

The Romers have provided excellent care for Eric since he was placed in their temporary custody in November 1993. They promote Eric's relationship with his older siblings.

Marta Romer picks Katie and Michael up from school twice a week so they can visit with Eric. On occasion the children will spend the night together at the Romers. The Romers can best provide the stability and security Eric needs. Accordingly, we affirm the district court on this issue.

Finally, Christle contends the district court erred in determining her child support obligation for all three children. We disagree.

Every parent has a legal obligation to support his or her own children. Hartman by Hartman v. Stassis, 504 N.W.2d 129, 134 (Iowa App. 1993). A lack of assets will not serve as a shield against a child support obligor's responsibilities. In re Marriage of Phillips, 493 N.W.2d 872, 877 (Iowa App. 1992). A party's current inability to pay a support obligation is less of a consideration than his or her long-term ability to pay. See In re Marriage of Vetterneck, 334 N.W.2d 761, 763 (Iowa 1983).

Christle currently works part-time at minimum wage but testified she is able to work full-time. The record shows Christle's net monthly income is \$350. This falls within the discretionary range of the child support guidelines.

Based on this evidence the trial court properly established Christle's support obligation for Katie and Michael at \$100 per month and \$50 per month in support for Eric. We agree with the trial court's determinations and find them to be well within its discretion. To hold otherwise would result in substantial injustice to all

We determine any other issues raised by the parties are either covered by this opinion or are without merit. The district court decision is affirmed in its entirety. Costs of this appeal are assessed to Christle.

AFFIRMED.