IN THE COURT OF APPEALS OF IOWA

No. 3-386 / 92-1963

FILED
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CLERK SUPREME COURT
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IN RE THE MARRIAGE OF EDWARD A. SORENSEN AND SHERRY LYNN SORENSEN

Upon the Petition of

EDWARD A. SORENSEN,

Appellant,

And Concerning

SHERRY LYNN SORENSEN, n/k/a **SHERRY LYNN KNOTT,**

Appellee.

Appeal from the Iowa District Court for Shelby County, James M. Richardson, Judge.

The former husband appeals an order of the district court modifying the parties' dissolution decree and placing physical custody of two of the parties' three children with his former wife. **AFFIRMED.**

P. D. (Phil) Furlong, Sioux City, for appellant.

J. C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

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

On July 15, 1987, the district court dissolved the marriage of Edward and Sherry Sorensen. The parties had three children during the marriage: Eric, born in 1979; Kristen, born in 1980; and Marc, born in 1984. By agreement, physical care of the children was placed with their father during the nine school months and with their mother during the three summer months. The decree also provided for weekend visitation.

Sherry remarried five years ago and lives in Omaha, Nebraska, with her husband, William Knott. William and Sherry have a three-year-old son, Billy. William is employed by the City of Omaha. Sherry does not work outside of the home.

Edward is employed at a pork plant, and he also has a grain and livestock farming operation. Edward's mother, Kate, lives with the family and cares for the children.

Sherry filed this application for modification of the dissolution decree seeking physical custody of the children. Following a hearing, the district court modified the decree providing Sherry with physical custody of Kristen and Marc while Edward retained physical custody of Eric. The district court found Edward failed to cooperate with Sherry as required by the dissolution decree. Edward was found in contempt in June 1992, for failing to bring Eric to Sherry's for the summer. The district court found Sherry would be more likely to allow the children to

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continue to know and spend time with Edward if they were placed in her custody. The district court commented on Eric's demeanor during his testimony and found Eric was a bully with antisocial tendencies. The district court concluded Eric was a bad role model for the younger children. The district court found Marc and Kristen had a strong allegiance to each other and to their half brother, Billy, but not to Eric. Based upon these findings, the district court concluded it was in Kristen and Marc's best interests for Sherry to have physical custody of both children. The court then modified the visitation schedule.

Edward appeals the order of the district court placing physical custody of Marc and Kristen with Sherry.

A matter concerning appendix designation has also been submitted with the appeal. We are to determine whether either party has designated unnecessary parts of the record to be included in the appendix, and, if so, whether certain costs should be taxed to the offending party regardless of the outcome of the appeal.

Our review in this equity action is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the district court, especially when considering the credibility of the

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witnesses, but are not bound by them. Iowa R. App. 14(f)(7). On our review, we affirm the district court.

I. Custody.

Edward contends the district court erred in finding a substantial change in material circumstances which justifies a modification of custody of the children.

Our primary consideration in deciding custody issues is the best interests of the children. In re Marriage of Weidner, 338 N.W.2d 351, 359 (Iowa 1983). To change the custodial provision of a dissolution decree, the applying party must establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983).

A custodial parent's lack of cooperation with the noncustodial parent's effort to maintain satisfactory visitation and communication with the children may be a substantial change in circumstances warranting a modification of custody. See In re Marriage of Grabill, 414 N.W.2d 852, 853-54 (Iowa App. 1987); Iowa Code § 598.41(1) (1991). Edward made disparaging remarks about Sherry both in front of and directly to the children on numerous occasions. He also attempted to frustrate Sherry's visitation with the children at every turn.

Edward remained inflexible about visitation throughout the modification hearing. He denied a request by Sherry to take the children out to dinner or for a refreshment so they could visit with their maternal grandparents who traveled from Colorado to be with them at the hearing. The district court found this incident an example of Edward's hostile attitude toward Sherry. In addition, it found his refusal to promote the children's opportunities for maximum contact with Sherry is not in their best interest, contrary to the expressed intent of Iowa Code section 598.41(1). We agree.

Edward contends the children should not be separated from each other without a good and compelling reason. Our courts ordinarily attempt to keep children of broken homes together in an attempt to foster the best interests of the children. In re Marriage of Ellerbroeck, 377 N.W.2d 257, 260 (Iowa App. 1985) (citation omitted). However, a court may depart from this standard when it is apparent separation may better serve the long-term best interests of the children. See In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981). In making this determination, a court should consider the relationships between the children and the likelihood one child will turn the other children against the other parent. See In re Marriage of Will, 489 N.W.2d 394, 398 (Iowa 1992) (citations omitted).

A thorough review of the record indicates it is in Kristen and Marc's long-term best interests to be placed

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with their mother. They testified they did not feel close to Eric and their relationships with him are poor. In contrast, the relationship between Kristen and Marc is strong. Eric expresses his hatred toward Sherry to the younger children. He also threatens them when they speak positively of or show affection toward Sherry.

The district court had the opportunity to view firsthand the demeanor of the witnesses. In its observation of Eric, the court stated:

> This court must comment upon Eric's demeanor while testifying. The record speaks for itself as to his comments. However, no appellate court can appreciate what this court viewed. The hatred in Eric's eyes, his tone of voice and his disregard towards any authority figure is most disturbing.

Edward encourages this attitude in Eric either actively or through his silence and he maintains Eric is a good role model for Kristen and Marc. The record indicates otherwise.

The record shows there has been a substantial change in circumstances which justify a change in custody. We find the provisions of the district court's modification order to be in the best interests of Kristen and Marc.

II. Appendix Designation.

Finally, a matter concerning appendix designation has been submitted with this appeal. This issue does not affect the merits of the appeal, but is nonetheless

important. The appendix submitted in this appeal contains unnecessary material.

The supreme court issued an order striking both parties' original designation of appendix. It ordered both to file amended and substituted designation of parts. The appellant was directed to limit his designation to those parts of the record which are most relevant to the issue raised on appeal. See Iowa R. App. P. 15(a), (b). The appendix in this case includes almost the entire transcript from the modification hearing, contrary to appellant's and appellee's amended and substituted designations of parts.

A copy of the transcript is made available for the court's use. It is unnecessary to reproduce the entire transcript in the appendix. This results in an "unwarranted printing expense and . . . an unwarranted reading burden on the members of the appellate courts." See In re Marriage of Hunt, 476 N.W.2d 99, 104 (Iowa App. 1992) (citing State v. Oppelt, 329 N.W.2d 17, 21 (Iowa 1983)).

Edward is ordered to pay the costs of this appeal.

For all the reasons stated, the judgment of the district court is affirmed in its entirety.

AFFIRMED.