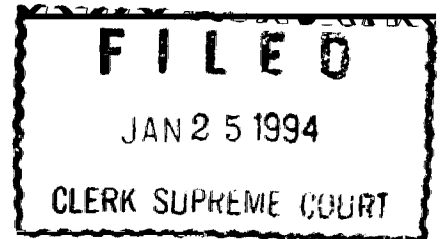


IN THE COURT OF APPEALS OF IOWA

No. 3-283 / 92-1864



IN RE THE MARRIAGE OF JULIE ANN SQUIRES AND
ROBERT ALAN SQUIRES

Upon the Petition of
JULIE ANN SQUIRES n/k/a JULIE ANN DANLEY,

Petitioner-Appellant,

And Concerning
ROBERT ALAN SQUIRES,

Respondent-Appellee.

Appeal from the Iowa District Court for Linn County,
Van D. Zimmer, Judge.

Julie appeals from the district court's denial of her
petition to modify the dissolution decree. **AFFIRMED.**

Michael L. Mollman of Mollman & Wertz, Cedar Rapids,
for appellant.

Judith Jennings Hoover, Cedar Rapids, for appellee.

Considered by Sackett, P.J., Habhab, J. and Peterson,
S.J.*

*Senior judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

HABHAB, J.

Julie Squires n/k/a Julie Danley appeals from the district court's denial of her petition to modify the parties' dissolution decree. We affirm.

Julie and Robert Squires were married February 14, 1982 and their only child, Breanna, was born June 28, 1982. A decree was entered in December 1986 dissolving the marriage and awarding the parties joint custody of Breanna.

The parties had stipulated to custody and visitation arrangements which the court incorporated into the dissolution decree. The court awarded the parties' joint custody of Breanna, with Julie receiving primary physical care. Robert was awarded liberal visitation including alternate weekends, a four-week visitation period during the summer, and alternate holidays. Robert was also awarded visitation one evening per week from 6:00 p.m. to 8:30 a.m. Robert was ordered to pay \$40 per week in child support for Breanna.

Julie was born May 18, 1959. She is a high school graduate. She works for Quaker Oats. In 1986 she had a gross annual income of \$23,285. Robert was born June 27, 1954. He works for Cargill, West. His gross income for 1985 was \$20,508. In addition, he has a small farming operation.

In April 1992, Julie petitioned for modification of the dissolution decree. The court found Julie's 1991 gross income to have increased to \$28,548. In contrast, it found

Robert's 1991 gross income to have fallen to \$18,474, despite his wages rising from \$8.96 per hour to \$10.45 per hour. The court found insufficient information had been presented to enable it to make any finding regarding the average loss or gain from the farming operation. The only tax return provided to the court establishes the farming operation showed a loss for tax purposes of \$2,836 in 1991. According to the original dissolution decree the farm operation lost \$16,283.77 in 1985. It was disputed at the modification hearing what this figure represented. The tax return for that year was not made part of the record; nor was there any documentary evidence to enable the trial court to determine the profitability or unprofitability of the farming operation for the years 1986, 1987, 1988, 1989 and 1990.

The trial court also noted Robert has a prior child support order for his three children from his first marriage. Robert testified he pays \$303.33 per month under this prior order.

The trial court concluded no substantial change of circumstances had been established and denied the petition for modification. Julie appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the 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 trial

court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial 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 Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack and applied in Kern are applicable here as well:

A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762.

Julie argues the district court erred in not modifying Robert's child support obligation. After reviewing the record de novo, we agree with the district court that Julie

has not shown a substantial change in circumstance since the dissolution decree. We affirm on this issue.

Julie also requests we modify the original decree to impose a time deadline on Robert to pay uncovered medical expenses after he receives the bill. We decline to do so. The original decree dealt with these medical expenses. Costs which are not covered by insurance are to be divided between the parties. We find these new medical expenses are appropriately allocated in the original decree. If Robert does not pay his share of these expenses in a timely fashion, there are legal remedies available to Julie to compel the enforcement of that provision of the dissolution decree.

Julie also requests we modify the visitation in the original dissolution decree. She claims Robert's visitation with Breanna is disruptive and therefore Robert's visitation should be reduced.

The standard for modification of visitation privileges is the demonstration by the party seeking modification of a change in circumstances since the entry of the dissolution decree. In re Marriage of Burwinkel, 426 N.W.2d 664, 665 (Iowa App. 1988). Courts should include liberal visitation where appropriate, in order to afford the child the opportunity to maximize the continuing physical and emotional contact with both parents. Iowa Code § 598.41(1) (1991). The governing consideration, as always, is the best interest of the child. Id. The relationship between

Breanna and her father should be encouraged and nourished. We find the original dissolution decree does this. We therefore will not disturb the visitation schedule set out in the original decree.

Robert seeks attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

We conclude each party should pay his/her own attorney fees for this appeal. Cost of this appeal are assessed to the appellant.

AFFIRMED.