FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF TERRY LEIGH McINTIRE AND SCOTTIE LEE McINTIRE

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Upon the Petition of)

TERRY LEIGH McINTIRE,)

Petitioner-Appellant/ Cross-Appellee,)

And Concerning)

SCOTTIE LEE McINTIRE,)

Respondent-Appellee/ Cross-Appellant.)

Filed August 29, 1985

5-243
84-1582

Appeal from the Iowa District Court for Polk County - Theodore H. Miller, Judge.

Petitioner wife appeals and respondent husband cross-appeals from the trial court's ruling on petitioner wife's application for modification of the decree dissolving the parties' marriage. AFFIRMED.

Harlan M. Hockett and David P. Jennett of Flagg, Hockett, Benhart & Jennett, Des Moines, for petitioner-appellant/cross-appellee.

Gary D. Ordway of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for respondent-appellee/cross-appellant.

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

Petitioner wife appeals and respondent husband cross-appeals from the trial court's ruling on her application for modification of the decree dissolving the parties' marriage. In the ruling, the trial court (1) denied petitioner wife's request that custody of the parties' child be transferred to her, and (2) modified the visitation provisions of the dissolution decree. On appeal, petitioner wife asserts that the trial court should have granted her request for a custody transfer. On cross-appeal, respondent husband asserts that the trial court's provision for the parties to meet at a point midway between their two towns to exchange the child for visitations is not in the child's best interests.

The marriage of petitioner Terry Leigh McIntire and Scottie Lee McIntire was dissolved in 1979. The dissolution decree incorporated the parties' stipulation: Scottie was given custody of the parties' child, Emily, born in 1977, and Terry was allowed "reasonable and liberal" visitation; the parties were to meet at Scottie's home to exchange the child for visitations. In 1982, Terry applied for a modification of the dissolution decree; she asked that custody of the child be transferred to her, and she asserted (1) that both parties had remarried, and her home environment was now better for the child than Scottie's; and (2) that Scottie had determined to deprive her of contact with and information about the child. Scottie answered the application for modification.

At trial, Terry did not dispute Scottie's ability to care for Emily, but instead maintained that the problems began when Janet, Scottie's present wife, moved into Scottie's household in 1982. Scottie and Janet have had arguments which were overheard by Emily. Further, Emily has apparently been confused at times as to who her "mother" is due to her relationship with Janet and Terry. Evidence was submitted which indicated Emily has complained about suffering from emotional distress and discomfort. Conflicting testimony did exist, however, as to the

adequacy of Scottie and Janet's household as a suitable environment for Emily and as to Emily's mental condition.

After trial, the court denied Terry's request for a custody transfer; it did, however, set out a specific visitation schedule for Terry, with Terry to pick up the child for visitations from school or from Scottie's home. In ruling on a post-trial motion, the trial court found that the parties now lived in towns four hours apart; it therefore provided for the parties to meet at a point midway between their two towns to exchange the child for visitations. Terry has appealed and Scottie has cross-appealed.

I.

The first and governing consideration in modifying a child custody order is the best interest of the child. Iowa R. App. P. 14(f)(15). The noncustodial parent has the burden of establishing by a preponderance of the evidence that conditions since the court decree have so materially and substantially changed that the child's best interests make it expedient to award such parent custody of the child. In re Marriage of Hubbard, 315 N.W.2d 75, 80 (Iowa 1982); In re Marriage of Melton, 256 N.W.2d 200, 209 (Iowa 1977); Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). Once custody is fixed, it should seldom be disturbed and only then for the most cogent reasons. Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975); Stouwie v. Stouwie, 222 N.W.2d 435, 438 (Iowa 1974). Thus, the parent seeking to take custody from the other must show some superior claim based on the ability to minister not equally but more effectively to the child's well being. In re Marriage of Brown, 247 N.W.2d 2, 4 (Iowa 1976); In re Marriage of Gutermuth, 246 N.W.2d 272, 274 (Iowa 1976).

Terry presses two principal claims in favor of modification: (1) that she can provide a better home environment for Emily and (2) that Scottie will deprive her of contact with Emily.

First, it is admitted by the parties that the other has the financial ability to

provide a good home for Emily and that both parents have a satisfactory relationship with their daughter. Terry contends that the addition of Janet to Scottie's household has and will continue to result in such a stressful situation for Emily that Emily's best interests require Terry to be the custodial parent. We cannot agree.

While Janet's marriage to Scottie may have had a disruptive impact on Emily and arguments between the spouses were overheard by Emily, such incidents are not compelling enough to indicate that Emily should be uprooted and moved to Terry's household. Scottie has provided Emily with a stable home for five years and the record indicates Emily is a well-adjusted child. It is unfortunate that Emily had to endure any stress; however, the record does not indicate such continued discomfort will result so as to merit a custodial change.

Terry also complains that Emily is confused as to who her "mother" is and that Janet has aggravated this situation. The record indicates that Scottie and Janet have tried to explain the situation to Emily to clarify any misunderstanding. Furthermore, such confusion among children as to their "real" parent is not uncommon. In re Marriage of Brown, 247 N.W.2d 3, 4 (Iowa 1976). Any confusion by Emily as to who her "mother" is falls short of supporting grounds for a custodial change.

Secondly, any initial problems regarding Terry's visitation rights have been remedied and concern on Terry's behalf about continued visitation rights appears to be unwarranted. We find nothing in the record which indicates Scottie's unwillingness to have Emily visit with Terry as scheduled. The present situation does not constitute a material and substantial change in conditions from the original decree.

II.

The custodial parent, Scottie, has cross-appealed a portion of the visitation order which requires him to meet Terry at a midpoint between their respective

towns to exchange Emily. Scottie claims this transportation scheme is impractical because the exchange would take place at an unfamiliar, roadside setting which would not be in Emily's best interest. He also contends that it may be difficult for the parties to meet each other at the desired time due to work commitments and unfavorable weather conditions.

Visitation rights, like custody, are determined by the best interests of the child. In re Marriage of Hubbard, 315 N.W.2d at 82. Although certain problems may arise in implementing the midpoint exchange, we find that such an arrangement is consistent with the best interests of Emily and leave the trial court's order intact. Any problems in coordinating the exchange should be worked out by the parties.

We are satisfied that the trial court's rulings are correct under the circumstances.

AFFIRMED.