FILED
SEP 21 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CORA LUCILLE TILLMAN AND DENNIS DUANE TILLMAN

156

UPON THE PETITION OF
CORA LUCILLE TILLMAN,

Petitioner-Appellant,

AND CONCERNING
DENNIS DUANE TILLMAN,

Respondent-Appellee.

Filed September 21, 1982

2-283
3-68017

Appeal from Page District Court, Glen M. McGee, Judge.

Petitioner-wife appeals from the decree dissolving the parties' marriage, contending that the trial court erred in (1) awarding custody of the parties' child to the husband; (2) providing that the husband could later apply for child support from her "without the necessity of showing any intervening change of circumstances"; and (3) admitting testimony of the parties' minister over her objections that the testimony included material that was confidential and privileged under Iowa Code § 622.10 (1981). AFFIRMED.

Verd R. Bailey of the Davidson Law Office, Clarinda, for petitioner-appellant.

Gary T. Gee, Shenandoah, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

Petitioner-wife appeals from the decree dissolving the parties' marriage, contending that the trial court erred in (1) awarding custody of the parties' child to the husband; (2) providing that the husband could later apply for child support from her "without the necessity of showing any intervening change of circumstances"; and (3) admitting testimony of the parties' minister over her objections that the testimony included material that was confidential and privileged under Iowa Code § 622.10 (1981). We affirm.

The parties, Dennis Duane Tillman and Cora Lucille Tillman, were married in 1971. Cora had been married four times previously and had custody of three children at the time of her marriage to Dennis. Dennis had been married once before and had custody of his two minor children. These five children lived with the parties during the present marriage. In addition, one child, John Tillman, was born to the parties in 1972.

In January 1981, Cora filed a petition for dissolution of marriage. She moved, taking her two children and John, the subject of this custody dispute. She then requested and was granted a restraining order against her husband to prevent him from contacting herself, her children, or their son John. Dennis honored the terms of the restraining order until it was lifted by court order, and consequently was able to see John very rarely initially.

In December 1981, a decree was entered dissolving the marriage of the parties. Custody of the parties' son John was awarded to Dennis. The trial court did not order Cora to pay child support, but provided that Dennis could later apply for such payments from her "without the necessity of showing an intervening change of circumstances." On appeal, Cora challenges the child custody and support provisions of the decree, as well as the admission of testimony that she claims was confidential.

I. We first consider the child custody issue. The Iowa Supreme Court summarized the general principles applicable to custody determinations in In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974):

> Our review is de novo. Although we are not bound by trial court findings we give them weight. The status of children should be quickly fixed and, thereafter, little disturbed. Siblings should usually not be separated. No hard and fast rule governs which parent should have custody. It is not a matter of reward or punishment. The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the children.

Id. at 166 (quoting In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974)). The Winter court then proceeded to list twelve factors to be considered by the courts in making custody awards. Winter, 223 N.W.2d at 166.

Applying these factors and specific factors considered in other cases to the instant case, we believe that the trial court properly awarded custody of John to his father. The Iowa Supreme Court has stated that the best interests of a child generally require a continuing association with the noncustodial parent, Spotts v. Spotts, 197 N.W.2d 370, 372 (Iowa 1972), and the record indicates that such an association could be jeopardized by awarding custody to Cora. We also note that Dennis has made conscientious efforts to promote his son's religious education, see Carey v. Carey, 211 N.W.2d 342, 345 (Iowa 1973), and that Dennis' other two children have developed a good sibling relationship with John, see In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974).

II. Cora next contends that the trial court erred by admitting certain testimony from the parties' minister over her objections that the testimony included information that was confidential and privileged under Iowa Code § 662.10. This section provides, in pertinent part, "No practicing attorney... who obtains such information by reason of his employment, minister of the gospel or priest... shall be allowed, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity. . . " (emphasis added).

We have examined the record thoroughly and conclude that Cora has not satisfied the burden of establishing that the minister's testimony revealed confidential or privileged information. See Allen v. Lindeman, 148 N.W.2d 610, 615 (Iowa 1967). Rather, the minister's comments were carefully guarded and were limited to general personal observations; thus they did not constitute "confidential communication properly entrusted to him." Iowa Code § 662.10 (emphasis added); cf. Pardie v. Pardie, 158 N.W.2d 641, 645 (Iowa 1968)(privileged communication was found to exist where "clergyman was permitted to testify regarding statements made to him by [plaintiff]]).

III. The trial court included the following provision in its decree:

> That the petitioner shall not be currently required to pay an amount of child support for a minor child, John Patrick Tillman, due to the petitioner's current financial situation.
>
> Respondent shall have the right to make application to the Court, without the necessity of showing an intervening change of circumstances, to fix an amount of child support at a later date, and this Court shall retain jurisdiction to determine such child support in the event that application is made in accordance with this paragraph.

On appeal, Cora contends that the trial court abused its discretion in providing that Dennis could later apply for child support without demonstrating the material and substantial change of circumstances necessary for modification of a divorce decree.

We disagree. The Iowa Supreme Court recently indicated that it would uphold such a provision, stating that "when the decree unequivocally provides for later trial court review without the necessity of showing a change of circumstances," the trial court retains jurisdiction to modify the decree even in the absence of proof of such a change. In re Marriage of Schlenker, 300 N.W.2d 164, 166 (Iowa 1981); see Wells v. Wells, 168 N.W.2d 54, 57 (Iowa 1969). We accordingly affirm the decision of the trial court.

AFFIRMED.