

IN THE COURT OF APPEALS OF IOWA

No. 9-471 / 89-177

FILED

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CLERK SUPREME COURT

IN RE THE MARRIAGE OF DOUGLAS E. LATHAM AND
PATRICIA L. LATHAM

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Upon the Petition of

DOUGLAS E. LATHAM,

Appellant,

And Concerning

PATRICIA LYN PHILIPS, f/k/a PATRICIA LYN LATHAM,

Appellee.

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

Appellant challenges the district court's modification of the parties' dissolution decree. He argues the district court erred in denying his requests for: (1) split custody; (2) expanded visitation rights with his daughter; (3) a reduction in child support; and (4) restructuring the future educational expenses for his daughter. **AFFIRMED.**

Mark S. Beckman of Pfeiler & Beckman Law Offices,
Dubuque, for appellant.

Stephen W. Scott of Kintzinger, Van Etten, Setter,
Pearce & Scott, Dubuque, for appellee.

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

DONIELSON, J.

The parties' marriage was dissolved on November 19, 1982. They have one child, Tiffany. The district court granted Patricia and Douglas joint custody of their daughter and placed Tiffany in her mother's physical care. The original dissolution decree specifically provided "Douglas shall have access to any school and health records concerning Tiffany, and along with [Patricia], may share the responsibility for making decisions relating to the health, education and general welfare of Tiffany." The decree also provided Douglas was to pay child support of \$275 per month. This was the amount stipulated by the parties prior to the entry of the decree.

On September 12, 1988, Douglas filed an application for modification of the decree. Alleging a substantial change in circumstances, he sought: 1) split custody; 2) specified visitation arrangements; 3) a decrease in his child support obligation; and 4) a modification of the provision for Tiffany's post-high school education. The trial court modified Douglas's summer visitation schedule, but otherwise it left the original decree intact.

On appeal, Douglas claims the district court erred with regard to each of the claims he submitted in his application for modification. Our review of equitable proceedings is de novo. Iowa R. App. P. 4. Upon our examination of the record, we find the district court's decision should be affirmed.

I. Split Custody. In his brief, Douglas states he is not seeking split custody unless it is the only means available to ensure he will have access to his daughter's medical and educational records. Contending he has had difficulty in obtaining such information in the past, he seeks a judicial directive which sets forth his rights as the joint legal custodian for Tiffany. We note at the outset the heavy burden Douglas has in seeking a modification of the custody arrangements. 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). The party seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. Id. See also In re Marriage of Gravatt, 371 N.W.2d 836 (Iowa App. 1985).

The district court granted Douglas and Patricia joint legal custody of their daughter Tiffany. The rights and responsibilities of a legal custodian include equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction. Iowa Code § 598.41(5) (1989). See also In re Marriage of Ullerich,

367 N.W.2d 297, 299 (Iowa App. 1985); In re Marriage of Fish, 350 N.W.2d 226, 230 (Iowa App. 1984).

The dissolution decree specified Douglas, as joint custodian for Tiffany, was to have access to school and health records concerning his daughter. In its order regarding the modification application, the district court recognized it was Douglas's responsibility to make sure school officials knew his legal status and their obligation to provide him with information regarding his daughter:

We remind the parties that each custodian is entitled to an equal voice in the significant decisions of Tiffany's upbringing. This includes decisions regarding school, medical care and other aspects of life. Douglas needs to make certain that the school system understands his custodial rights regarding Tiffany and that the school honors them in terms of providing him with information.

In its order regarding Douglas's motion to reconsider, the district court reiterated its concern that Douglas had not fully utilized his own resources to obtain information about his daughter:

The petitioner asks for some direction from the Court to the medical community regarding his rights as joint custodian. The Court declines to provide any such lecture except to note that the petitioner was totally unpersuasive at the time of hearing that he has ever fully exercised his rights to information concerning his daughter. His statements concerning problems with the school were unpersuasive and clearly suggested that he has at no point energetically pursued his remedies with the school system. In any event, there is no evidence to suggest that the medical community has any misunderstanding concerning the petitioner's rights of access to information concerning his child.

No further judicial action is necessitated to ensure Douglas access to his daughter's medical and educational records. He has this right pursuant to his status as joint legal custodian, and the dissolution decree specifically delineates the obligation of medical and educational authorities to provide him this information. Douglas's alleged difficulty in obtaining his daughter's medical and educational records is not a change in circumstances sufficient to warrant any change in custody; split custody, which is not a favored custodial status in Iowa, In re Marriage of Muell, 408 N.W.2d 774, 776 (Iowa App. 1987), is certainly not justified in this case. The trial court's decision is affirmed in this regard.

II. Visitation. Douglas contends the trial court erred in modifying the visitation provision of the dissolution decree. In his modification application, Douglas had sought a more specific visitation schedule. The decree had awarded him reasonable rights of visitation to consist of not less than two weekends per month and up to thirty consecutive days during Tiffany's summer vacation. In its modification order, the district court struck the previous provision and established the following visitation arrangements:

Douglas shall have reasonable visitation rights with Tiffany. At a minimum, such visitation rights shall include visitation from 6:00 p.m. on Friday evening to 6:00 p.m. on Sunday evening every other weekend. In addition, Douglas shall be entitled to five consecutive weeks of visitation each summer. He is not permitted to

break up these weeks of visitation except with the permission of Patricia. In addition, to the greatest extent possible, such weeks of visitation shall be exercised in either the entire first half of the summer or the entire second half of the summer. The five weeks shall not be taken in the middle of the summer unless Patricia consents. Douglas shall notify Patricia in writing no later than March 1 of each year whether he desires to exercise his visitation during the first five weeks of the summer or the last five weeks of the summer. Such visitation shall in no event interfere with Tiffany's school schedule. Patricia is entitled to reciprocal visitation on weekends during this five-week period. Her visitation rights are defined in the same fashion as are Douglas'.

To justify a modification of visitation rights, there must be demonstrated a change of circumstances since the dissolution decree, but such change may be much less extensive than would be necessary to obtain custody. In re Glass' Marriage, 213 N.W.2d 668, 670 (Iowa 1973). The trial court found Douglas and Patricia had experienced continuing difficulty in communicating effectively with regard to visitation with Tiffany. The trial court's designation of specific time periods during which weekend visitation would occur was warranted by the parents' failure in communication.

The trial court's modification of the summer visitation schedule was also justified. At the time the dissolution decree was entered, Tiffany was two; she was nine at the time of the modification hearing. Both parents testified with regard to the fact that Douglas's past summer visitation arrangements had interfered with Tiffany's

ability to partake in various summer activities. Rather than have visitation with Tiffany for thirty consecutive days each summer, Douglas chose to utilize his visitation rights by having Tiffany for shorter, and more numerous, visits. Testimony indicated one reason Douglas preferred this type of visitation was because it enabled him to take the maximum credit available against his monthly child support obligation. This broken-up approach toward visitation, however, prevented Tiffany from fully participating in Bible school, swimming courses, summer sports, and Girl Scout camp.

Tiffany's aging, and her need and desire to participate in various organized summer activities, constitutes a change in circumstances sufficient to warrant modification of the summer visitation schedule. The trial court's modification represents a reasonable compromise of the various interests involved in this matter, and we find no reason to change it. Douglas complains the provision allowing Patricia "reciprocal visitation" during his five weeks of summer visitation will prevent him from taking Tiffany on a lengthy vacation. Douglas has misconstrued the trial court's modification order. It provides Patricia with "reciprocal visitation." This provision awards Patricia visitation on alternate weekends, just as Douglas has a right to visitation on alternate weekends during the rest of the year when Tiffany is in the primary care of

Patricia. This construction of the modification order should put to rest any concerns Douglas had about taking Tiffany on summer trips. If Patricia's right to alternate weekend visitation still interferes with his vacation plans, Douglas and Patricia will have to work out an arrangement. This court strongly encourages them to put aside their personal animosities and cooperate in regard to Tiffany's visitation schedule.

III. Child Support. Douglas claims the trial court erred in rejecting his application for a reduction in child support. He contends Patricia's remarriage, and his remarriage and current responsibility for three stepchildren, justifies a reduction of his monthly support obligation. Child support orders may be modified if there is a substantial change in circumstances. Iowa Code § 598.21(8) (1989). The facts in this case reveal each party has remarried and each of their new spouses has an income similar to that earned by Douglas and Patricia. Patricia and her new husband have had a son. Douglas's new wife has three children from a prior marriage and she receives child support on their behalf.

The income, assets, and responsibilities have increased for both Douglas and Patricia. The trial court appropriately considered the factors set forth in Iowa Code sections 598.21(8)(a)-(k) (1989) when rendering its decision. Douglas failed to demonstrate a substantial

change in circumstances sufficient to warrant a reduction in his child support obligation, and we affirm the trial court's decision on this issue.

IV. Future Educational Expenses. Douglas argues the trial court erred in refusing to modify the provision of the decree relating to Tiffany's future educational expenses. The decree provides for his child support obligation to end when Tiffany graduates high school. If she seeks a post-high school education, Patricia and Douglas are to equally divide the costs of her room, board, and tuition. Douglas seeks to remove this obligation and instead be required to continue his support payments. These payments would be placed in trust for furtherance of Tiffany's education.

The material change in circumstances Douglas relies on in support of this claim is the same as set forth in support of his argument for a reduced child support obligation. We found those arguments previously unpersuasive, and they are also insufficient to warrant modification of this part of the dissolution decree. The trial court did not err in refusing to modify this provision of the decree.

V. Attorney Fees. Patricia seeks attorney fees on appeal. In determining whether such an award is warranted, we 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). From our review of the record, it is apparent Douglas should be ordered to pay \$1,500 of Patricia's appellate attorney fees.

AFFIRMED.