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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-633 / 92-792

IN RE THE MARRIAGE OF R.J. BELZ AND TAMI DOREEN BELZ

Upon the Petition of

R. J. BELZ,

Appellant,

And Concerning
TAMI DOREEN BELZ, n/k/a **TAMI DOREEN WHITMAN,**

Appellee.

Appeal from the Iowa District Court for Polk County, J. W. Jordan, Judge.

R.J. Belz appeals a district court order denying his application to modify the parties' original dissolution decree and his petition to show cause why his ex-wife should not be held in contempt. **AFFIRMED.**

Timothy W. Greene of Borseth & Holmes, Pleasant Hill, for appellant.

Jeffrey M. Lamberti of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.

Heard by Oxberger, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

On August 17, 1985, R. J. Belz and Tami Belz (n/k/a Tami Whitman) were married. They have one child, Robert Jarred Belz, born February 7, 1988. On January 30, 1990, the district court issued a decree of dissolution of marriage, awarding the parties joint custody of Robert with physical custody placed with Tami.

Since the dissolution, the parties appeared before the district court on a contempt action and petition to modify. On December 20, 1990, the court denied the modification and found them both to be in contempt for their continual "sparring."

In June 1991, R.J. filed an application for rule to show cause why Tami should not be held in contempt for disobeying the dissolution decree by, among other things, denying him visitation with Robert on Father's Day in 1991. The application also sought to have the primary custody of Robert transferred to R.J.

Tami filed a resistance to the application for rule to show cause and an application for modification of decree of dissolution. R.J. then filed an answer to Tami's application for modification and a counter-application for modification. He repeated his request to transfer the primary physical care of Robert to himself.

The district court denied R.J.'s application for rule to show cause and application for modification. It found Tami did not deny R.J. his visitation on Father's Day. The

court also denied Tami's application for modification, except for ordering R.J. to provide Tami with a copy of Robert's current health care card or information, that R.J. does not have the right to preapprove medical procedures relating to Robert, and that R.J. should be permitted to enter upon Tami's property only in emergency conditions concerning Robert. The court also ordered each party to continue counseling.

R.J. then filed a motion to review, modify and expand the ruling for modification. The district court deleted an objectionable word from its prior ruling and denied R.J.'s request to change counselors. R.J. appeals. We affirm.

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).

> To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of 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. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify

> custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citing In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980)).

At trial, and again on appeal, R.J. argues custody should be changed for a number of reasons. R.J. maintains Tami and her new husband exhibit inappropriate parenting behavior to the detriment of Robert. He claims, among other things, that it is in Robert's best interest that primary custody be transferred to him. R.J. believes that he is a victim of "parental alienation syndrome" and that Tami's actions are an attempt to alienate R.J. from his son. R.J. presented testimony from Dr. Martin that a symptom of parental alienation syndrome is Tami and her family "harassing and stalking" R.J. and his new girlfriend. The district court found that Tami or someone on her behalf made "hang-up" calls, but refused to agree with Dr. Martin's assessment that R.J. was a victim of parental alienation syndrome, reasoning that Dr. Martin's conclusions were based on inaccurate information given to him by R.J.

R.J. further alleges that Robert has been physically abused while in Tami's care. The two reports of Tami's alleged child abuse were investigated and declared unfounded.

We have reviewed the facts and the trial court's decision. The trial court found there had been no substantial change in circumstances sufficient to justify a change in custody. From our de novo review, we agree. We also agree that R.J. has not shown by the requisite degree of proof that he was denied visitation on June 14, 1991. We therefore deny his request for make-up visitation.

Neither party's conduct has been exemplary. We encourage both parents to continue to improve communications with each other for the sake of their child.

Tami requests 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 award Tami $500 to apply to her appellate attorney fees. Costs of appeal are assessed to R.J.

We affirm the trial court on all issues.

AFFIRMED.