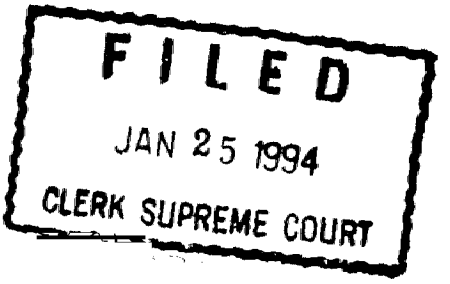
IN THE COURT OF APPEALS OF IOWA

No. 3-617 / 93-459



IN RE THE MARRIAGE OF GARY MICHAEL SMILEY AND DEBRA ANN (SMILEY) LAMB

Upon the Petition of

GARY MICHAEL SMILEY,

Appellant/Cross-Appellee,

And Concerning

DEBRA ANN (SMILEY) LAMB,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Mills County, Glen M. McGee, Judge.

Gary appeals and Debra cross-appeals from an order modifying the child custody and support provisions of their dissolution decree. **REVERSED AND REMANDED.**

Michael J. Winter, Council Bluffs, for appellant.

John M. Trewet of Kluever, Van Ginkel & Trewet, Atlantic, for appellee.

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

OXBERGER, C.J.

Gary and Debra Smiley were divorced in 1987, with primary care of their three sons, Travis, born February 27, 1977, Dustin, born October 17, 1978, and Bradley, born June 22, 1981, awarded to Debra. Gary filed an application to modify the custody provisions within one year. In the 1988 proceeding, the district court found no change in circumstances warranting a modification and admonished Gary for his attempts to control Debra's actions.

Debra married Rocky Lamb in October 1988 and the two had a son, Devon, in 1991. Gary married Peggy in February 1989.

In the fall of 1991, the Smiley boys asked Gary to take some action so they could live with him. He took them to his attorney, who outlined what was necessary to cause a change in custody. In April 1992, Gary filed an application to modify the custody provisions of the decree. On June 7, 1992, Travis and Dustin found marijuana in Debra's home and turned it over to the sheriff's office. They then called Gary, who picked them up and took them to his farm home, where they have resided since. Gary picked Bradley up one day later. Bradley did not return to Debra's home until his birthday, June 22. No formal exchange of visitation occurred between June and Christmas of 1992, and it occurred only then, upon court order.

During Christmas of 1992, Debra told Rocky that if he could not control his temper, she would divorce him.

Following a hearing on Gary's application, the district court concluded:

> It is obvious to the Court that since the Decree of Dissolution, [Gary] has continued to engage in efforts to gain custody of the children, including taking the children with him to discuss ways of doing so with his then attorney. This is in direct conflict with his responsibility to avoid involving the children in any problems or conflicts between himself and his former wife. The court does not find any sufficient change of circumstances allowing a change of custody, and is changing custody of the two older boys only because the two older boys are requesting it and the Court finds it would be in their best interest.
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> . . .
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> The court specifically finds that [Gary] has failed in his responsibility to promote and encourage visitation between the children and their mother . . .

The district court ordered Gary's child support obligation to cease as of February 1, 1993.

Gary appeals, contending the district court erred in separating custody of the parties' three sons and in failing to order Debra to pay child support. On cross-appeal, Debra contends the district court erred in modifying the custody provisions where the court specifically found no substantial change of circumstances. She also challenges the district court's termination of Gary's child support obligation.

I. Standard of review. 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).

II. Custody. "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." 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)).

Our de novo review of the record leads us to the conclusion that a change of custody would not be in the children's best interests. We are convinced that Debra has promoted, and will continue to promote, maximum contact between the children and their father. While Rocky Lamb's temper causes us pause, we believe Debra has made it clear that those temper outbursts will cease or she will divorce him. We remind Gary that interference with the boys' relationship with their mother is not in his children's best interests. See Iowa Code § 598.1(6) ("Refusal by one parent to provide [the opportunity for maximum contact between parent and child] without just cause shall be considered harmful to the best interest of the child."); c.f. In re Marriage of Quirk, No. 93-09 (Iowa Dec. 22,

1993) (willful interference with visitation is alone sufficient to modify custody). We therefore reverse the order modifying the child custody provisions of the decree.

III. Child Support. Because we have reversed the modification of child custody, we also reverse the termination of Gary's child support obligation.

We reverse the modification order and remand for dismissal of the petition.

REVERSED AND REMANDED.