FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-603 / 93-131

IN RE THE MARRIAGE OF CHARLES S. RYAN AND BARBARA ANN RYAN

Upon the Petition of
CHARLES S. RYAN,

Appellant,

And Concerning
BARBARA ANN RYAN,

Appellee.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Charles Steven Ryan appeals the modification of the parties' dissolution decree. **AFFIRMED.**

Eric Borseth of Borseth and Holmes, Pleasant Hill, for appellant.

Tim Pearson and Teri Beyer of Hyland, Laden & Pearson, P.C., Des Moines, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

Charles Steven Ryan (Steve) and Barbara Ryan were divorced in 1988. They were given joint custody of their son, Jason, born March 25, 1984. Physical care was awarded to Barbara. Steve was ordered to pay $450 monthly child support. Since Steve lives in California he was awarded visitation coinciding with Jason's spring vacation, six weeks during summer vacation, and one week at Christmas.

Steve filed his petition for modification in May 1991, requesting primary physical care of Jason. Barbara filed her answer and counter application to modify the decree, requesting an increase in child support and other support issues.

The district court found no substantial change in circumstances to justify a modification in primary care. However, the court found Steve's net income had risen from $2200 per month to $4067.56 per month. The court increased Steve's child support obligation to $915.20 per month. The district court also modified Christmas and summer visitation and ordered Steve to pay $3200 toward Barbara's attorney fees.

Steve appeals. We affirm the district court.

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).

Steve requested a change in custody, placing Jason with him.

> 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)). Steve argues Jason is struggling in school and he and his wife could minister better to Jason's developmental needs. The evidence introduced at the modification hearing does not support this claim. Although Jason may not be at the top of his class, he certainly is not having the educational and developmental problems Steve claims. We also note, contrary to his petition for modification, Steve testified at the hearing he only wanted to try the change in placement for a year to see if Jason would benefit from the change. We do not find evidence of a material and substantial change in circumstances

warranting a change in custody or an expansion of visitation.

Steve also contends the district court erred in calculating child support on his 1992 income. He asserts his 1993 income has decreased to $2365.52 per month and the child support should be set at $532.24 per month. We disagree. The December 1992 pay stub provided by Steve showed his year-to-date income as nearly $62,000. The court used that figure and subtracted the allowable deductions to arrive at a net monthly income for child support calculation of $4067. This places the calculation of child support pursuant to the guidelines in the sound discretion of the court. The district court applied the same percentage to Steve's monthly income as would be applied to a monthly income under $3000. We find no abuse of discretion in the calculation of Steve's income or his child support obligation.

Steve asserts his salary in 1993 was going to be reduced so his income would be $36,000 instead of $62,000. The court properly used the evidence of current income before it in calculating Steve's child support obligation, instead of speculating what his 1993 income might be. In re Marriage of Manson, 503 N.W.2d 427, 430 (Iowa App. 1993); In re Marriage of Cossel, 487 N.W.2d 679, 681-83 (Iowa App. 1992). If Steve's income does decrease as dramatically as he claims, Iowa Code sections 598.21(8) and (9) (1993) would permit Steve to seek a modification of his

support obligation at that time. See Manson, 503 N.W.2d at 430.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). Iowa Code section 598.36 gives the court discretion to award the prevailing party reasonable attorney fees. Barbara was the prevailing party in the modification action. To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

Steve argues the attorney fees requested were unreasonable. We disagree. The court, in its discretion, awarded Barbara roughly half her attorney fees. We find the award reasonable under the circumstances of this case and within Steve's means to pay. We decline to disturb the district court's award on appeal.

Finally, Barbara asks for appellate attorney fees. 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 district court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Barbara was obligated to defend the decision of the district court on appeal. Steve's ability to pay is sufficient. We direct Steve to pay $2000 toward Barbara's appellate attorney fees.

For the reasons stated, we affirm the decision of the district court in all respects. We determine any other issues the parties may have raised are either covered by this opinion or are without merit. Costs of this appeal are taxed to appellant.

AFFIRMED.