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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-498 / 89-1867

IN RE THE MARRIAGE OF JAMES W. KILNOSKI AND MELODY K. KILNOSKI

Upon the Petition of

JAMES W. KILNOSKI,

Appellee,

And Concerning

MELODY K. KILNOSKI,

Appellant.

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

The district court modified the parties' 1987 dissolution decree by changing the husband's visitation schedule due to his move from Iowa to Las Vegas. However, the district court declined the wife's request to increase her child support award. **AFFIRMED.**

Lyle A. Rodenburg, Council Bluffs, and A. W. Tauke, of Porter, Tauke & Crowl, Council Bluffs, for appellant.

Troyce A. Wheeler, Council Bluffs, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

DONIELSON, P.J.

James and Melody Kilnoski were married in 1982. They are the parents of two children, a boy born in January 1984 and a girl born in June 1985. The marriage was dissolved in 1987. The 1987 decree placed the two children in Melody's care, subject to visitation by James. The decree also directed James to pay Melody child support of $150 per month per child.

In 1989 Melody applied for modification of the 1987 decree. She requested an increase in her child support award, noting that James now has a higher-paying job than he held in 1987. She also requested modifications in James's visitation schedule because of his move from the Council Bluffs area to Las Vegas, Nevada.

After a hearing, the district court declined to increase Melody's child support award. The court found that Melody, as well as James, had a higher income in 1989 than in 1987. The court did modify James's visitation schedule because of his move to Las Vegas. However, the court denied Melody's request that James be required to exercise all of his visitation in the Council Bluffs-Omaha area; the court permitted James to exercise a summer visit and a Christmas visit in Las Vegas.

Melody has appealed from the district court's modification order. Melody challenges the court's refusal to increase her child support award. In addition, she

contends James should be required to provide health insurance for the children.

Melody also contends the court should have restricted all of James's visitation to the Council Bluffs area, or at least to the State of Iowa. Melody asserts that the children should not be required to travel to Las Vegas because of their tender ages and their unfamiliarity with travel. Melody also asserts that James cannot provide a stable and wholesome home in Las Vegas. She states that in Las Vegas James generally stays with his mother, whom she describes as a bitter, angry, and alcoholic woman living in a chaotic home with an abusive boyfriend. Melody asserts that the children should not be sent to Las Vegas for visitation because of the unwholesomeness of the grandmother's home, combined with James's own drinking problem and his failure to secure another permanent address.

On July 25, 1990, while this appeal was pending, Melody filed a motion to stay James's Las Vegas visitation (scheduled to begin on August 7, 1990) until the appeal has been decided. That motion remains pending at this time.

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).

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack and applied in Kern are applicable here as well:

> A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been in the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762.

Melody contends the trial court erred in refusing to modify the amount of child support. Melody maintains the trial court ignored the criteria of Iowa Code section 598.21(8), and focused instead on the fact that her income

has increased since the time of the enlarged decree. We disagree.

Melody's affidavit reveals she earns approximately $1,426.77 net per month from Knudson Development. At the time the enlarged decree was entered, Melody was earning $790 per month. James's income is approximately $1,170 net per month. The enlarged decree provided that James was to pay $300 per month in child support pursuant to the guidelines adopted by the October 16, 1990, order of the supreme court. Pursuant to those guidelines, a noncustodial parent earning in excess of $1001 net per month must pay 24.2% of his or her net monthly income as child support. Thus, under the guidelines James is required to pay $283.14 per month. The enlarged decree, however, requires James to pay $300 per month.

The record also reveals that although the cost of raising the parties' two children has increased, Melody's standard of living has actually increased rather than decreased. Since the time of the enlarged decree, Melody has moved from an apartment in Council Bluffs and purchased a home in Omaha. The house payment is approximately $473 per month compared to rent of $379. Melody has also chosen to send Justin to a Montessori school, which costs approximately $95 per month, rather than partake in free public education provided by the State of Nebraska. Melody also reveals in her financial affidavit she spends $50 per month on cable television.

Upon our independent examination of the record, we cannot say the trial court erred in refusing to increase James's child support obligation. Melody has not demonstrated that her needs are significantly greater than that envisioned by the trial court at the time of the enlarged decree. The trial court certainly envisioned that both parties would have increased incomes. Melody is relatively debt free and is accumulating equity in her home. James is unable at the present time to afford an apartment of his own and is currently living with his mother. Melody has chosen to assume expenses which are not considered essential to maintain a comfortable household. While we do not diminish Melody's attempt to obtain a good education for her children, such expenses as a Montessori school are completely optional, given the free public education available to Melody as a resident of Nebraska.

Based on the foregoing facts, we believe the trial court was correct in refusing to modify James's child support obligation. We find this especially true in light of the trial court's order requiring James to cover one-half of all medical expenses not covered by Melody's insurance, plus up to $250 per year as his part of the deductible for health care on Melody's policy.

Melody next asserts the trial court erred in refusing to limit the visitation rights of James to visits within Iowa. Melody maintains James has a drinking problem and drinks in front of the children. Melody also contends

James's mother's home is a troubled home due to the mother's alcoholism and bad relations with James's two sisters. Melody insists there are numerous fights which occur in the home. Melody also argues the children are too young to travel the distance from Omaha to Las Vegas.

The standard for modification of visitation privileges is the demonstration by the party seeking modification of a change of circumstances since the entry of the dissolution decree. In re Marriage of Burwinkle, 426 N.W.2d 664, 665 (Iowa App. 1988). We have long held that visitation should be fashioned in such a way as to promote the maximum physical and emotional contact with both parents, unless direct physical harm or significant emotional distress would likely result from such visitation. Iowa Code § 598.41(1) (1989); In re Marriage of Hatzievgenakis, 434 N.W.2d 914, 917 (Iowa App. 1988).

We find little merit in Melody's fears that the children are too young to travel to Las Vegas. We recognized in Hatzievgenakis that "[t]he world does not end at the borders of Iowa." 434 N.W.2d at 917. In Hatzievgenakis, we allowed a husband who lived in Greece to have visitation with his six-year-old child in Greece. Id. We are confident that all precautions would be taken to ensure safe travel by the parties' children.

We are more concerned, however, with Melody's allegations that James has a severe drinking problem and drinks in front of the children. We are also concerned

with her allegations that James's mother is an alcoholic, uses abusive language in front of the children, and also has frequent violent fights at her home with James's sisters. James does admit that his mother has a drinking problem and admits that fights have occurred at his mother's home, but insists he would not subject the children to anything more than a visit to his mother's home and that the children would not stay at the home. James argues that he would have to get a place of his own and would be more than willing to do so if visitation to Las Vegas is granted. James states that he will be responsible for all transportation expenses to have the children come to Las Vegas.

The trial court, upon hearing the testimony of all the witnesses who testified at trial, concluded that James did not have as serious a drinking problem as alluded to by Melody and that the children would not be endangered by James having a drink in front of the children. The court did recognize that there were serious family problems at James's mother's home. The trial court concluded that James was concerned with the best interests of the children and that he would appropriately provide for the welfare and safety of the children during their visits.

We agree. While we encourage the children to have a relationship their grandmother, we trust that James will not subject the children to the volatility of the grandmother's household. While James is certainly not

without his problems, we believe from his testimony, as did the trial court, that James will govern his actions in favor of the children's best interests. We do not believe, however, that the children should reside in the home of the grandmother while in Las Vegas. We therefore encourage James to obtain his own apartment in which the children may stay. We find no abuse of discretion by the trial court here.

AFFIRMED.