IN THE COURT OF APPEALS OF IOWA

No. 2-251 / 91-1743

FILED
JUN 25 1992
CLERK SUPREME COURT

IN RE THE MARRIAGE OF LORI L. INGLES AND JERRY A. INGLES

Upon the Petition of

LORI L. INGLES,

Petitioner-Appellant,

And Concerning

JERRY A. INGLES,

Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge.

Petitioner former wife appeals the trial court's modification of the joint custody provision of the decree dissolving the parties' marriage. **AFFIRMED.**

Donna Lesyshen of Tyler & Lesyshen, Waterloo, for appellant.

David H. Correll, Cedar Falls, for appellee.

Heard by Sackett, P.J., and Habhab, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

The trial court modified a 1988 dissolution decree transferring the physical care of the parties' child from petitioner-appellant Lori L. Ingles to respondent-appellee Jerry A. Ingles. Appellant appeals contending the modification was not justified. We affirm.

The marriage of appellant Lori Ingles and appellee Jerry A. Ingles was dissolved in June 1988. The parties agreed, and the trial court ordered joint custody of their child Zachary, born in July 1986, and that Lori would have physical care of Zachary.

In January 1990 Jerry filed a petition asking the dissolution decree be modified to grant him physical care of Zachary. In August 1991 the trial court modified the decree and granted Jerry physical care of Zachary and ordered Jerry to pay $920 toward Lori's attorney fees.

Lori first contends that physical care should not have been modified. Our review is de novo. In re Marriage of Kalvig, 460 N.W.2d 189, 190 (Iowa App. 1990). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. 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

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. at 158. See also In re Marriage of Gravatt, 371 N.W.2d 836, 838-40 (Iowa App. 1985).

The question in this appeal is whether Jerry has met the burden necessary to modify his dissolution decree and transfer physical care of Zachary from Lori to himself. In seeking to modify the dissolution decree, Jerry carries a heavy burden. See In re Marriage of Downing, 432 N.W.2d 692, 693 (Iowa App. 1988). Jerry must show an ability to minister to the child's needs superior to Lori's. In re Marriage of Ivins, 309 N.W.2d 75, 78 (Iowa 1981); Crary v. Curtis, 199 N.W.2d 319, 320 (Iowa 1972).

At the time of trial, Jerry had been married for about five months. Jerry's wife Raquel testified at trial she met Zachary when he was fourteen months old. During the two years Jerry and Raquel dated, Raquel testified that she saw Zachary on the average of once a week. Jerry and Raquel testified Zachary spent more than fifty percent of the time during the last couple of years in their home.

At the time of trial, Lori was working as a teacher's aide. Lori has moved six times since the divorce. Lori has not remarried but has had live-in relationships with

two or three men, at least one of whom has physically abused her and used vulgar language in front of Zachary. Lori testified she was unwilling to terminate the abusive relationship with her live-in boyfriend. Children are immediately, directly, and deeply affected by the kind and quality of home that is made for them. Frederici, 338 N.W.2d at 161. Lori testified Zachary cut himself with her razor and she let it bleed so he would learn and be taught a lesson. We look to parents' past conduct in assessing their parenting skills.

Jerry did not cross-appeal but contends he should not have been ordered to pay Lori's attorney fees in the trial court. We affirm on this issue.

We deny Lori's request for attorney fees on appeal. The costs of this appeal should be taxed one-half to Jerry and one-half to Lori.

AFFIRMED.