

IN THE COURT OF APPEALS OF IOWA

9-376 / 89-115

IN RE THE MARRIAGE OF BOBBI B. BOCKWOLDT
AND LOREN S. BOCKWOLDT

FILED

OCT 05 1989

CLERK SUPREME COURT

30

Upon the Petition of

BOBBI B. BOCKWOLDT,

Appellant,

And Concerning

LOREN S. BOCKWOLDT,

Appellee.

Appeal from the Iowa District Court for Scott County,
Max Werling, Judge.

Petitioner appeals the ruling of the district court
granting respondent's application for modification and
transferring physical care of the parties' minor child to
respondent. **AFFIRMED.**

Harold J. DeLange II, Davenport, for appellant.

William B. Norton and Bradley Norton of Norton &
Norton, Lowden, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,

JJ

HAYDEN, J.

31

Petitioner appeals the ruling of the district court which granted respondent's application for modification and transferred physical care of the parties' minor son to respondent. Petitioner claims the court erred in modifying the custodial provisions of the original decree of dissolution of marriage. We affirm as modified.

Bobbi Bockwoldt (petitioner) and Loren Bockwoldt (respondent) were married on June 6, 1981. They had one child, Brock Bockwoldt, born August 12, 1982. On June 9, 1983, their marriage was dissolved. Although the parties stipulated both parents were fit and proper persons to have custody, they agreed to Bobbi having sole custody of Brock. Loren was granted liberal visitation.

At the time of dissolution, Bobbi worked for United Parcel Service in Davenport. Early in 1985 she began dating her present husband, Steve Regan. They married in May 1986. In October 1986, a girl was born to Bobbi and Steve. At the end of 1985 or early 1986 Bobbi was asked to resign from United Parcel Service because she was delivering C.O.D. packages without collecting the money, which violated her employer's policy. For a brief time, Bobbi worked for a telemarketing firm and at a printing factory. On Memorial Day weekend, 1987, Bobbi was arrested and charged with conspiring to have her husband murdered. Prior to this, Loren was seeking to gain joint custody of Brock because there had been problems with his visitation.

After learning of Bobbi's arrest, he sought temporary custody, which was denied after a hearing in July because he had not produced sufficient evidence. On February 5, 1988, the court granted temporary custody to Loren, with reasonable and liberal visitation with Bobbi, her husband, and their child. By this time, Bobbi had been convicted of a class D felony and had been sentenced to an indeterminate five-year term. She was incarcerated on January 29, 1988, and released in August 1988 on parole. On December 9, 1988, following a trial, the court modified the decree, granting joint custody to both parents with physical custody awarded to Loren. Bobbi appeals this modification, arguing the trial court erred in modifying the custodial provisions of the decree.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). In re Marriage of Fish, 350 N.W.2d 226, 228 (Iowa App. 1984).

The first and governing consideration is the best interests of the children. Zaerr v. Zaerr, 222 N.W.2d 476, 477 (Iowa 1974). In a modification proceeding, the noncustodial parent seeking custody must prove an ability to minister more effectively than the custodial parent to their well being. Id.

Bobbi argues her arrest and conviction is "an aberrant, attention grabbing event" which could easily lead to a knee-jerk reaction to modify custody. She maintains that a dispassionate evaluation of all the evidence will lead this court to conclude her character, parenting ability, and stability are not implicated sufficiently by this event to warrant a modification of custody. However, our reading of the record and the trial court findings lead us to disagree.

We must determine whether the noncustodial parent established by a preponderance of evidence that conditions since the court decree have so materially and substantially changed that the child's best interests make change expedient. In re Marriage of Snyder, 276 N.W.2d 402, 404 (Iowa 1979).

The trial court correctly concluded the best interests of Brock dictated he remain with his father.

The boy has been living with his father for almost two years by now. We agree with the trial court a disruption of this situation would have a negative impact on him. He has been in school and doing well. A change in custody would necessitate a relocation to a different elementary school.

The trial court found Loren to be practical and dependable. He has demonstrated maturity and better judgment in handling the events surrounding Bobbi's

31
criminal conviction and imprisonment than has Bobbi. She told her son she was in a very special hospital, not jail. This caused Brock to be anxious about an illness and possible loss of his mother.

The court concluded Bobbi's acknowledged violation of her parole agreement which precludes alcohol consumption places her in jeopardy of being sent back to prison. If this happened, the boy would have to return to his father's again--another change in custody.

Expert witnesses testified, and the court concluded, Bobbi's judgment under stress could become quite poor. Her approach to situations reflecting negatively on her is to shade responses, hide the truth, and give false impressions. The court witnessed this in her testimony and stated it eroded confidence in her parenting abilities. We give weight to these findings because, as difficult as it is to assess credibility of live testimony, it is more difficult to do so from a transcript. Zaerr v. Zaerr, 222 N.W.2d at 477.

Loren has always demonstrated a willingness to provide Brock with liberal visitation with Bobbi, her husband, and child. We are confident this will continue to be true.

The trial court did not err in modifying the original decree and awarding the parties joint custody with physical care granted to the father and visitation rights to the mother.

AFFIRMED.