FILED
OCT 23 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JULI A. DANIELS AND MICHAEL J. DANIELS

Upon the Petition of)

JULI A. DANIELS,)

Petitioner-Appellee/ Cross-Appellant,)

And Concerning)

MICHAEL J. DANIELS,)

Respondent-Appellant/ Cross-Appellee.)

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Filed October 23, 1984

4-346
84-509

Appeal from the Iowa District Court for Emmet County - Charles H. Barlow, Judge.

Respondent father appeals and petitioner mother cross-appeals from modification of the parties' dissolution decree. Respondent asserts that a substantial and material change of circumstances was shown justifying transfer to him of custody of two of the parties' three children and that child support should have been reduced in an amount greater than was ordered by the trial court. Petitioner asserts that no reduction in child support should have been ordered. AFFIRMED.

John G. Martens of Sanderson, Ridout, Martens & Surfass, Estherville, for respondent-appellant.

Nathan S. McCay of Rosendahl, Forsyth, Mohn & McCay, Estherville, for petitioner/cross-appellant.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

Pursuant to a stipulation entered as the parties' dissolution decree in March 1982, the mother, Juli, was awarded custody of the children: Lisa, now aged 15; Traci, now aged 13; and Ryan, now aged 11. She was also awarded child support of $50 per week per child. At that time she was a nursing student with a gross annual income of approximately $649. She has now completed her education and is employed part-time as a nurse with a gross monthly income of approximately $1,328 during the six-month period prior to the trial.

While they were married and at the time of the divorce, the couple lived in Estherville, Iowa. In July 1983, Juli and the children moved to Marshall, Minnesota, to be closer to her boyfriend who was transferred from Algona, Iowa, to Marshall.

The father, Michael, filed a petition to modify the divorce decree seeking custody of Lisa and Ryan and a reduction in the amount of child support. As a change of circumstances, he alleged the increase in Juli's income and her move from Estherville to Marshall, together with the expressed desire of Lisa and Ryan to live with their father. While Juli and the children lived in Estherville, Michael saw the children often. He cared for the children for two months while Juli was completing her nursing training in Cherokee. Since the move to Marshall, Michael's contact with the children has been primarily by telephone. He does not have a roadworthy car, making trips to Marshall difficult. Michael testified that with the amount of support he is required to pay, the purchase of a new car is not feasible at this time. If he wants to see the children, he generally must borrow a car from his parents who live in Fort Dodge or Juli must bring the children to Estherville. At the trial, Lisa and Ryan testified that they felt their father understood them better and that they wished to live with him.

The trial court found that neither parent was deficient in parenting ability but that no substantial and material change of circumstances had been shown

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sufficient to justify a transfer of custody. Child support was reduced to $38.46 per week per child.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to credibility of witnesses. Iowa R. App. P. 14(f)(7).

I. Custody of Ryan and Lisa. The parent seeking the change in custody must show some superior claim based on his or her ability to minister, not equally, but more effectively to the child's well being. Crary v. Curtis, 199 N.W.2d 319, 320 (Iowa 1972). Spotts v. Spotts, 197 N.W.2d 370 (Iowa 1972). The petitioner must show by a preponderance of the evidence that conditions have so materially changed that the welfare of the children requires that they be awarded to him or her. Crary v. Curtis, 199 N.W.2d at 320.

While the record indicates that Michael is a responsible, caring father, we find that he has failed to establish parenting skills superior to those of Juli which justify modifying the decree.

Both parents care very much for the children and each agrees that the other is a competent parent. From a reading of the record, it appears that each can provide a suitable living environment for the children. Because of Juli's job, the children are required to assume more responsibility for tasks such as cooking meals and washing clothes. Michael testified that when the children visit him they are also assigned tasks and expected to complete them.

When Juli was living in Estherville, the children saw their father three to four times a week. While Juli was completing her nursing traning in Cherokee, Michael cared for the children for two months. Since the family has moved to Marshall, the physical contact has been much less frequent. Traci, the middle child, does not wish to return to Estherville and live with her father. Ryan and Lisa each expressed to the judge a desire to live with their father.

The preferences of minor children, while not controlling, are relevant and should be considered. In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979). Ryan and his father have a very close relationship and there is no doubt that the move has been difficult for him. Lisa also stated that she feels closer to her father than her mother and that her father seems to understand her better. It appears from the testimony that Juli is more of a disciplinarian than Michael and has more rigid rules for the children. Jim Weipert, a clinical social worker who counseled Juli and the children after the divorce, testified that Lisa and Ryan's desire to live with Michael might stem from the fact that they don't have the day-to-day hassles with him that they have with their mother.

While we do not doubt the genuineness of the children's statements that they would prefer to live with their father, we agree with the trial court's order that they remain with their mother and other sister. Both Ryan and Lisa testified that they would miss their sister if they were separated. We have consistently held, siblings should not be separated without good and compelling reason. Jones v. Jones, 175 N.W.2d 389, 391 (Iowa 1970).

The children seem to be adjusting to their new home in Marshall. Both Ryan and Lisa told the judge that they liked their new school in Marshall and had made new friends. The evaluations of their teachers indicate that they are doing satisfactorily in their classes and are becoming more involved socially.

We find that Ryan and Lisa should remain with their mother and sister. Although the distance makes visitation more difficult, there have been no great differences between the parents as to visitation in the past and we assume that this relationship will continue.

II. Child Support. The trial court reduced the amount of child support from $50.00 per child per week to $38.46 per child per week. Michael argues that because of Juli's increased earning capacity and because of the increased costs he

incurred because of the children's move to Marshall, the amount of child support should be further reduced.

To justify modification of a child support provision, some material change must be shown in the parties' circumstances, financially or otherwise, making it equitable that other or different terms be imposed. This change in circumstances should be more or less permanent and not just temporary. If the change relied on is of a financial condition, it must be substantial. Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973). In considering a change in child support, the court must consider each parent's earning capacity, economic circumstances, and cost of living. Iowa Code § 598.21(8) (1983).

The record supports the trial court's ruling that there has been a substantial change in circumstances which justifies a reduction in child support. Juli estimated the children's expenses at $425 to $480 per month. She has a current net take-home pay of $899.64 per month. Michael's net take-home pay is $1,172.66 per month. In view of her increased earnings and the increased costs Michael is experiencing because of the move to Marshall, we find the reduction of support to $38.46 per child per week to be appropriate.

Each party shall be responsible for paying his or her own attorney fees.

The findings of the trial court are affirmed.

AFFIRMED.