FILED
MAR 23 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHIRLEY ANN BROWNING AND CHARLES L. BROWNING

403

UPON THE PETITION OF SHIRLEY ANN BROWNING,	)	Filed March 23, 1982
Petitioner-Appellee,	)	2-39 / 3-67231
AND CONCERNING CHARLES L. BROWNING,	)	
Respondent-Appellant.	)	

Appeal from Pottawattamie District Court, J. C. Irvin, Judge.

Respondent-father appeals from modification of the parties' dissolution decree, asserting that the order appealed from impermissibly modified the property settlement provisions of the original decree, than an attorney should have been appointed to represent the child whose custody was at issue, that the evidence was insufficient to establish that the mother could minister to the child's needs more effectively than the father, and that the child support award was excessive. Petitioner-wife has requested attorney fees for this appeal. AFFIRMED.

Dennis J. Mahr, Sioux City, for respondent-appellant.

Matthew Walsh, Council Bluffs, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Respondent-father appeals from modification of the parties' dissolution decree, asserting that the order appealed from impermissibly modified the property settlement provisions of the original decree, that an attorney should have been appointed to represent the child whose custody was at issue, that the evidence was insufficient to establish that the mother could minister to the child's needs more effectively than the father, and that the child support award was excessive. Petitioner-wife has requested attorney fees for this appeal. We affirm.

The parties were married on June 20, 1953, and have five children. Their youngest child, Pamela, was born October 8, 1964, and is now seventeen years old. Custody of Pamela is the main issue presented on appeal.

The parties' 1977 dissolution decree awarded the father custody of Pamela. Custody has been modified three times. On January 17, 1979, custody was transferred to the mother, and on May 5, 1980, custody was transferred back to the father. The latest modification, on June 12, 1981, transferred custody to the mother, ordered the father to pay support of $300 per month, and directed the sale of the parties' home upon the terms set out in the original decree. The court also directed each of the parties to deduct $3000 from their share of the proceeds of the sale to be used for Pamela's educational expenses.

Pamela testified she wished to live with her mother again because of her father's strong fundamentalist religious views and because he restricts her activities. Pamela admits to using marijuana, but she has no dependency on the drug. Both parents attempt to discourage her use of the drug.

I. Custody.

Several well-settled principles aid us in determining the validity of this custody modification. The parent seeking to obtain a custody change must show

some superior claim based on his or her ability to minister more effectively than the other parent to the child's well-being. In re Marriage of Gutermuth, 246 N.W.2d 272, 274 (Iowa 1976). Changed circumstances, not contemplated by the court when the decree was entered and which are more or less permanent and which relate to the child's welfare, make it expedient to award custody to the other parent. In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980).

In this case, the respondent-father does not allow Pamela, a seventeen-year-old high school student, to date, to watch television, or to entertain in the home. He allegedly discourages Pamela from associating with her brothers and sisters. The petitioner-mother has remarried, and Pamela gets along with her stepfather. The petitioner-mother appears to be more understanding of Pamela's needs and more attuned to the problems a teenager faces in modern life.

While Pamela's wishes are not controlling, they should be recognized and properly weighed. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). Considering Pamela's strong desire to live with her mother instead of her father and her age and maturity, we affirm the modification and transfer custody of Pamela to her mother with reasonable visitation rights for her father.

II. Child support.

Respondent appeals the child support award of $300 per month as excessive. In awarding child support, we consider the needs of the child, the parent's ability to pay, the age, health, and future prospects of the parties, their future earning capacities, and any other relevant facts. Norenberg v. Norenberg, 168 N.W.2d 794, 798 (Iowa 1969).

Respondent grosses $1950 each month. Petitioner currently draws $145 in sick leave every week, but prior to her sickness, she grossed $931.42 a month. She is remarried, and her new husband grosses approximately $22,000 per year, He pays $600 per month in child support and alimony.

The trial court's discretion in this matter will not be disturbed unless it fails to do equity. Id. Under the evidence in the record and given the above considerations, we find no reason to disturb the award made by the trial court.

III. Representation of Minor.

Respondent-father has made a request to have an attorney represent the child's interests. Section 598.12, The Code, provides: "The court may appoint an attorney to represent the interests of the minor child or children of the parties." This language has been held to be directory only and not mandatory. Boyes v. Boyes, 247 N.W.2d 265, 268 (Iowa 1976). We can see no abuse of discretion on the trial court's part in refusing the request to appoint an attorney for Pamela.

IV. Property provisions.

Respondent alleges that the trial court changed the provisions of the original property settlement when it ordered that the parties' homestead be sold and $6000 of the proceeds be retained to finance Pamela's future plans for higher education.

Since Pamela's custody has been transferred to her mother, sale of the property is justified under the terms of the original decree. Additionally, providing for Pamela's education before college is within the court's discretion. A child does not need to be presently enrolled in college before support provisions can be made to finance the education. In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980). The state has a legitimate interest in promoting higher education, and allows, through its statutes, a trial court in its discretion to award support of the child through college. Id. Furthermore, the award of $6000 is neither excessive nor improper just because the award is more than requested. The rights of children are not controlled by the custodial parent. Id., (citations omitted).

V. Conclusions.

Custody of Pamela is transferred to her mother, and respondent-father must pay $300 per month in child support. No attorney need be appointed to represent Pamela's interests. We affirm the directions of the court ordering the sale of the homestead and putting $6000 of proceeds aside for Pamela's future education. Since there is no authority which provides for the allowance of attorney's fees in a modification of a dissolution case, Arnold v. Arnold, 250 Iowa 850, 860, 140 N.W.2d 874, 880 (1966); Hensen v. Hensen, 212 Iowa 1226, 238 N.W. 83 (1931), we deny the petitioner's request for attorney's fees.

AFFIRMED.