FILED
AUG 04 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-232 / 93-1813

IN RE THE MARRIAGE OF MELISSA L. VANNOY AND SCOTT D. VANNOY

Upon the Petition of
MELISSA L. VANNOY,

Appellant,

And Concerning
SCOTT D. VANNOY,

Appellee.

Appeal from the Iowa District Court for Marion County, Michael J. Streit, Judge.

Petitioner appeals from a judgment of the district court modifying the visitation and child support provisions of the parties' dissolution decree. **AFFIRMED.**

Greg A. Life of the Life Law Office, Oskaloosa, for appellant.

Richard O. McConville of Coppola, Sandre & McConville, Des Moines, and Boyd W. Boehlje of Gaass, Klyn & Boehlje, Pella, for appellee.

Heard by Hayden, P.J., and Habhab and Cady, JJ.

CADY, J.

Melissa appeals from the order of the district court denying her application for modification of the parties' dissolution decree. She contends the court erred in failing to find a material and substantial change in circumstances. She requests primary physical care of the parties children.

Scott and Melissa Vannoy were divorced June 2, 1989. They had two children, Heather and David, both born June 28, 1983. Pursuant to the decree, Scott was awarded physical custody of the children and Melissa was awarded reasonable and liberal visitation. Although Scott was awarded physical custody, due to his work schedule, the parties agreed pursuant to a stipulation to a split custody agreement. Scott would have the children from 6:00 a.m. until 4:00 p.m. Monday through Friday, and from noon Saturday until Sunday evening. Melissa would have the children from 4:00 p.m. until 6:00 a.m. Monday through Friday, Friday evening, and Saturday until noon.

On May 24, 1993, Melissa filed a petition to modify the decree, alleging that due to Scott's subsequent remarriage and the severity of punishment he inflicted upon the children for discipline, it would be in the best interests of the children that she be granted primary physical care. Melissa argued Scott has changed shifts at work numerous times and has not followed the guidelines of the stipulation regarding Melissa's visitation rights. Melissa

further alleged Scott has remarried twice since their divorce, and his new wife has children of her own, making the marital home crowded. Melissa additionally maintained the children had expressed a preference to live with her.

The district court ruled that Melissa had failed to show a substantial change in circumstances and reaffirmed Scott's care of the children. The district court also ruled that if the parties could not agree on reasonable and liberal visitation, Melissa would have visitation with the children from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. Melissa would also be granted visitation on alternating holidays, and six weeks of summer visitation. The district court also ordered Melissa to pay Scott $245 per month child support. Melissa has appealed.

Our review in cases such as these is de novo. Iowa R. App. P. 4. 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. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

I. Substantial Change in Circumstances

Melissa contends Scott's remarriages, introduction of rival siblings, and use of corporal punishment constitute a

material and substantial change in circumstances warranting modification of physical care provisions of the original decree. She further claims she is able to more effectively minister to the needs of the children.

The law governing modification of care provisions of a dissolution decree is well-settled:

> To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citing In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980)).

The evidence presented in this case indicates that the changes which have occurred were within the contemplation of the court at the time the decree was issued. Remarriage and introduction of additional siblings often occurs following dissolution and cannot be said to be outside the contemplation of the court. In addition, the independent home study conducted by the Department of Human Services indicated Scott has and continues to provide a safe and nurturing home. The report further indicated the children

appeared to be happy and well-adjusted in Scott's home. The report did not reflect a change in the discipline style used by Scott. In addition, trial testimony indicated Scott has consistently used authoritative discipline and does not appear to have altered his style since the dissolution. While we caution Scott against the use of and form of discipline which could result in harm to the children, we do not find that to be the case at this time. We affirm the trial court's refusal to find a substantial changes which were not within the court's contemplation at the time of the original decree.

II. Visitation

Melissa next contends the district court erred in modifying the visitation schedule. She claims her time with the children is greatly reduced.

Liberal visitation rights are in the best interests of the children. Iowa Code § 598.41(1) (1991); In re Marriage of Muell, 408 N.W.2d 774, 777 (Iowa App. 1987). Both parents, as joint custodians, are charged with maintaining those interests. However, maximizing the opportunity for the children's contact with the noncustodial parent does not require hour-for-hour, day-for-day visitation.

We find the visitation schedule allows maximum contact between Melissa and the children. We affirm the visitation schedule ordered by the district court.

III. Child Support

Finally, Melissa contends the trial court erred in its computation of child support. She claims their "split" arrangement requires a deviation from the child support guidelines.

It is well established that parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). The amount of time the children spend with the noncustodial parent, even if it is more than half the time, does not relieve the noncustodial parent from further support. State ex rel. Lara v. Lara, 495 N.W.2d 719, 722 (Iowa 1993). We further note the rebuttable presumption that the amount of child support which would result from the application of the guidelines is correct. In re Marriage of Van Ryswyk, 492 N.W.2d 728, 731 (Iowa App. 1992).

We agree with the district court's application of the uniform child support guidelines and affirm the amount of child support awarded. We award no attorney fees on appeal. Costs to Melissa.

AFFIRMED.