IN THE COURT OF APPEALS OF IOWA

No. 2-558 / 92-470

IN RE THE MARRIAGE OF MONA BACHMAN AND RAYMOND GENE BACHMAN

FILED
NOV 30 1992
CLERK SUPREME COURT

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Upon the Petition of

MONA THIES f/k/a MONA BACHMAN,

Petitioner-Appellant,

And Concerning

RAYMOND GENE BACHMAN,

Respondent-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Margaret L. Lingreen, Judge.

Wife appeals from the district court's modification of the parties' dissolution decree. **AFFIRMED.**

Michael K. Kennedy of Kennedy & Kennedy, New Hampton, for appellant.

Roger Sutton of the Sutton Law Office, Charles City, for appellee.

Richard Stochl of O'Donohoe, O'Connor, O'Donohoe & Stochl, New Hampton, guardian ad litem for minor children.

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

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

SACKETT, J.

Petitioner-appellant Mona Thies, formerly Mona Bachman, appeals a trial court order modifying her dissolution decree and transferring physical care of her two sons to her former husband and their father respondent-appellee Raymond Gene Bachman. We affirm.

Raymond and Mona were divorced in 1984. Their dissolution decree gave physical care of their children born in 1980 and 1981 to Mona. Raymond was ordered to pay child support.

In September 1990 Raymond filed a petition to modify the decree to change physical care to him. In July 1991 the two children moved in with Raymond and his current wife, following founded child abuse reports being filed against Mo and a boyfriend of Mona's who lived in her home. In ebruary 1992 the trial court modified the decree and transferred physical care to Raymond, made provision for Mona to have visitation, and ordered Mona to pay child support. Mona appeals contending Raymond has failed to meet the heavy burden necessary for modifying the custody provision of the decree. We affirm.

The case was submitted orally to us. The attorney for the children appeared and argued that we should affirm the modification.

Both parties have deficiencies, but they both truly care about their children and h e made an effort despite their own deficiencies to provide for their care.

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Before a decree can be modified changing custody, there must be a showing by the parent seeking the modification that there has been a substantial change in circumstances since the original decree and that he or she is a superior custodian. To change the custodial provision of this dissolution decree, Raymond had to establish by a preponderance of the evidence the conditions since the decree was entered have substantially changed and it is in the children's best interests that he be made custodian. See In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983). Raymond must prove he has the ability to give the children care superior to the care Mona is able to give. See also In re Marriage of Gravatt, 371 N.W.2d 836, 838-40 (Iowa App. 1985). Once the custody arrangements for a child or children have been decided, the custody should be changed only for the most cogent reasons. See In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980).

Mona recognizes her deficiencies. She has been a party to three marriages, and at the time of trial was involved in another relationship. Mona has used corporal punishment on the children, and she has not objected when adults in her home have used corporal punishment on the children also. But, Mona points out that Raymond is in a third marriage, he is delinquent with his child support, and she raised the children for an extended period without any help from Raymond.

Our review of the record causes us to agree with the attorney for the children and the trial court that at the present time Raymond has the superior ability to take care of the children. While in making the assessment we look to his past behavior and his failure to pay child support in amounts ordered, he has paid some support. We note too that he has matured and become more responsible. The children were living with their father when the matter came to trial. Mona continues to experience considerable turmoil in her life. While we have considered Raymond's delinquency in child support to Mona in making our assessment, we cannot let it control where there is substantial evidence the children have been abused in Mona's home and have a better chance for a safe and normal life in their father's home. Our focus is always the best interest of the children, and custody arrangements are made looking at the children's best interests. Custody arrangements are not made to punish parents for past inadequacies where they do not relate to current abilities to minister to children.

Each party shall pay his or her own attorney fees.

AFFIRMED.