IN THE COURT OF APPEALS OF IOWA

No. 1-149 / 90-1584

FILED
APR 23 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF PENNY LYNN MARTY AND CHRISTOPHER JAMES MARTY

Upon the Petition of

PENNY LYNN MARTY,

Appellee,

And Concerning

CHRISTOPHER JAMES MARTY,

Appellant.

100

Appeal from the Iowa District Court for Floyd County, John Mackey, Judge.

Christopher appeals the district court's refusal to change child custody and dismissal of his petition requesting modification of the parties' dissolution decree. **AFFIRMED.**

Kristy B. Arzberger of Zanville Law Offices, Mason City, for appellant.

James F. Smith of Noah & Smith, Charles City, for appellee.

Heard by Oxberger, C.J., and Hayden and Habhab, JJ.

OXBERGER, C.J.

Penny Lawless, formerly Penny Marty, and Christopher Marty were married May 26, 1979. A September 4, 1985, decree dissolved their marriage. A stipulation incorporated into the decree placed the primary physical care of their two children, then ages 6 and 3, with Penny. Christopher was ordered to pay child support in the monthly amount of $210 but no alimony.

After the dissolution decree was filed, Penny remained unemployed and cared for the children. Christopher paid his child support and exercised visitation. Penny and the children received ADC benefits and child support totaling $410 per month. Christopher provided medical insurance through his employer for the children but did not advise Penny as to the policy holder so she could file claims.

On July 8, 1986, Christopher filed a petition seeking to modify the custody provisions. This action lingered for four years and was twice subject to dismissals and reinstatements under Iowa Rule of Civil Procedure 215.1 for want of prosecution. During this time the children remained with Penny. On June 20, 1990, Christopher's present attorney entered an appearance, and the matter came for trial on September 6, 1990.

At trial, and again on appeal, Christopher argues custody should be changed for a number of reasons. Both parties have remarried and Christopher has two additional

children by his second marriage. Christopher believes Penny's husband is a bad influence on the children and Penny fails to properly clothe, clean, and discipline the children. He points to the children's academic difficulties, specifically that their son was recently held back, and Penny's lack of concern for school activities as additional reasons to modify the parties' decree. He also argues his home environment is more stable than Penny's and Penny has ignored the children's medical, dental, and eye care needs.

The district court heard considerable testimony and reviewed two home study reports prepared during the long pendency of this matter. Additionally, the court conducted an in camera visit with both children. The court observed Penny was a model tenant in subsidized housing and has obtained a job and removed herself from the public welfare rolls. Her circumstances have changed for the better since the decree. Finding no compelling or cogent reason to disturb the status quo, the court concluded Christopher failed to meet his burden of proof. Christopher appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of

witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

To change the custodial provision of a dissolution decree, the applying party must establish by a preponderance of the evidence conditions since the decree was entered have so materially and substantially changed the children's best interests make it expedient to make the requested change. In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983). The party seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. Id. See also In re Marriage of Gravatt, 371 N.W.2d 836 (Iowa App. 1985).

This burden stems from the principle that once custody of a child has been fixed, it should be disturbed only for the most cogent reasons. In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980).

Both the 1987 and 1990 home study presented to the district court stated Penny was providing an appropriate home for the children. Many of Christopher's complaints appear related to incidents which occurred several years ago and some questionably before the dissolution decree. The district court found, and we agree, Penny has made an admirable effort to improve her family's life since the dissolution. We encourage Penny to take a more active role in her children's education as well as encouraging Christopher to continue to be involved in their education.

The children have lived with Penny since the parties' 1984 dissolution and we see no reason to interfere with this long-standing custody arrangement. Penny has maintained a nurturing home for her children in the face of adversity. Christopher emphasizes he has gone beyond the financial responsibilities placed on him by the dissolution decree with respect to the children's health care and clothing. While these actions are laudable, we expect no less. Further, Christopher has failed to show that Penny's remarriage has had any adverse effects on the children.

AFFIRMED.