FILED
OCT 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-402 / 94-0655

CYNTHIA D. WOODHURST,

Appellee,

vs.

PAUL JOSEPH STRUNK,

Appellant.

Appeal from the Iowa District Court for Clinton County, Bobbi M. Alpers, Judge.

Defendant appeals from judgment of the district court denying his application for modification of the parties' separation agreement. **AFFIRMED.**

J. David Zimmerman of Pillers, Pillers & Zimmerman, P.C., Clinton, for appellant.

Neill A. Kroeger, Davenport, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

Paul Joseph Strunk (Joe) and Cynthia Woodhurst (Cindy) are the parents of Megan Woodhurst, born August 23, 1985. Pursuant to a separation order, physical custody of Megan was awarded to Cindy. Joe was awarded no less than three days visitation per week and was given first preference over a baby-sitter or day-care center. Joe was also awarded six weeks visitation during the calendar year. The order additionally provided if Cindy moved more than thirty miles from Clinton, Joe would immediately be entitled to physical care of Megan without further court order. The trial court did not enter a judgment for child support since Joe and Cindy agreed Joe should pay $125 per month in support plus fifty percent of any major medical health care insurance premium and fifty percent of any uninsured medical, dental, or optometrical expenses. Cindy was ordered entitled to claim Megan as a dependent for tax purposes.

On June 23, 1993, Joe filed a petition for modification of the decree requesting a change of physical custody. Joe maintained Cindy's substance abuse problems threatened Megan's well-being. Joe also argued Cindy's financial problems, including bad check charges, had caused Cindy to move eight times in a few years. Megan also testified at the modification hearing. She stated Cindy often left her alone at home or would take her to the various bars where she worked. Cindy testified Joe stopped paying child

support when she went on welfare. Cindy stated she was attempting to pay back all the bad checks and had lessened her consumption of alcohol because she was pregnant by her new husband. She also argued she was not able to see Megan a great deal because Joe exercised visitation at least four days per week.

The trial court ruled although the testimony against Cindy was compelling, it did not amount to a substantial change in circumstances from the previous court order. The court noted while the testimony against Cindy was unflattering, Megan appeared to have developed into a bright, relatively well-adjusted child. The trial court determined Megan's welfare was not threatened by keeping her in Cindy's custody and ordered her continued placement with her mother. Joe filed a rule 179(b) motion and rule 244 and 252 motions for new trial. The trial court denied the motions. Joe has appealed. We affirm.

Joe reiterates the arguments he made at the modification hearing. He asserts Cindy cannot keep a job due to her drinking and absenteeism and she is receiving welfare at the same time she is working a full-time job. Joe likewise emphasizes Cindy's continued alcohol and other drug abuse. He further notes she is using these drugs even though she is pregnant. Joe also claims even when Cindy does have Megan, she leaves her with someone else while she goes out to drink. He also notes Megan expressed a strong desire to live with her father and the trial court erred in not giving this preference greater weight.

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) (citation omitted).

"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." 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. The heavy burden upon a party seeking to modify custody stems from the principle once custody of a child has been fixed, it should be disturbed only for the most cogent reasons. Id. (citing In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980)). Because we determine Joe has not proven superior parenting ability, we affirm the decision of the trial court.

A parent's past performance may be indicative of the quality of future care the parent is capable of providing.

In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981) (termination proceeding). Joe has four adult children by a prior marriage. Joe played a significant role in the upbringing of only the two oldest sons. There is no mention of his relationship with the other two children of marriage. Joe has had live-in relationships with three women since Cindy's birth, resulting in the birth of two more children. Joe acknowledges he abused at least one of his live-in girlfriends. Joe has no contact with the two children which are younger than Megan and pays no child support for them. Joe has not sought court-ordered visitation with these children although he acknowledges paternity. This past performance certainly does not indicate a positive track record as a parent.

The evidence also demonstrates Cindy is far from a perfect parent. However, part of Cindy's shortcomings as a parent can be attributed to Joe. As a result of Joe's sporadic child support payments, Cindy was forced to work as many as three minimum-wage paying jobs simultaneously.

Certainly, both parents are far from ideal. Joe, however, has failed to prove he is better able to minister to Megan's needs. For this reason, we affirm the decision of the trial court. Costs on appeal are taxed to appellant.

AFFIRMED.