

FILED

IN THE COURT OF APPEALS OF IOWA JAN 30 1981

CLERK SUPREME COURT

IN RE THE MARRIAGE OF JUDITH ANN KUEHL AND JACK ALAN KUEHL

Upon the Petition of)

JUDITH ANN KUEHL,)

Filed January 30, 1981

Petitioner-Appellant,)

And Concerning)

JACK ALAN KUEHL,)

0-354

3-64319

Respondent-Appellee.)

Appeal from Polk District Court - Luther T. Glanton, Jr., Judge.

Petitioner wife appeals from trial court's modification of dissolution decree, contending that custody of their child should not have been changed to respondent and that the child support award of \$35 per week was inadequate. AFFIRMED.

Virgil Moore, Des Moines, for petitioner-appellant.

Richard H. Doyle, IV of Lawyer, Lawyer & Jackson, Des Moines, for respondent-appellee.

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

DONIELSON, J.

Petitioner, Judith Kuehl, appeals from modification of dissolution decree, contending that custody of their child should not have been changed to respondent husband and that the child support award of \$35 per week is inadequate. We affirm the grant of custody to respondent.

I.

On February 22, 1979, respondent filed an application to modify the custody provisions of the dissolution decree and petitioner filed a counterclaim for increased child support. Following an initial hearing on May 31, 1979, the trial court entered an order increasing child support to \$35 per week but did not determine the custody issue at that time because an investigation of the home situation had not yet been completed. On October 15, 1979, the trial court ruled that a substantial change in circumstances warranted modification of the custody provisions of the original decree and awarded custody to the respondent. Petitioner then brought this appeal.

Respondent and petitioner were married in 1970 and their marriage was dissolved in 1972. Petitioner received custody of their son, Alan, who was born in 1971, and the respondent was to pay \$20 per week in child support. Both parties had a net income of approximately \$50 per week at the time of the decree.

Petitioner lives with her mother and her two children, Alan, who is now 8 years old, and Louie, a son born out-of-wedlock to the petitioner in 1974. She works from 3:30 to 11:00 p.m. in a coffee shop, where she nets \$238 every two weeks. She also receives ADC. Respondent now nets around \$300 per week from his job as a truck driver. Testimony at the modification hearing revealed that the petitioner frequently uses marijuana in front of Alan and that on occasion she has gotten him to smoke marijuana as well. Alan testified at the hearing that he would prefer to live with the respondent. A juvenile probation officer who conducted a home investigation recommended that respondent be granted custody of his son.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 225 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App.

P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrl, 241 N.W.2d 923, 926 (Iowa 1976).

II.

Child custody provisions of a dissolution decree are final as to circumstances existing at the time of the original decree and should be modified only where subsequent conditions have so changed that the child's welfare requires modification and the party seeking modification can more effectively minister to the child's well-being than the current custodial parent. In re Marriage of Morton, 244 N.W.2d 819, 822 (Iowa 1976). Our paramount concern is the best interest of the child. Iowa R. App. P. 14(f)(15).

We conclude that the respondent has shown circumstances justifying modification of the custody provisions of the original decree and that he is the parent who is better able to effectively minister to Alan's well-being. Since the original decree was filed, the petitioner has become a heavy user of illegal drugs. By her own admission, she uses drugs freely in front of Alan and has more than once induced him to use them with her. These circumstances can hardly be said to constitute a healthy and wholesome atmosphere for an eight-year-old child. Furthermore, the fact that the petitioner continued this behavior even after the issue of Alan's exposure to marijuana use was raised at the initial hearing in May of 1979 indicates a singular lack of appreciation for the seriousness of the issue and a shocking lack of interest in Alan's general welfare. Petitioner argues that Alan should not be removed from her custody because he is doing well in school and because he and his half-brother should not be separated. While we acknowledge that siblings should not be separated absent good and compelling reasons, In re Marriage of Burnham, 283 N.W.2d 269, 276 (Iowa 1979), we will not hesitate to separate them where, as here, such reasons are present.

Because we affirm the trial court's modification of the decree to grant custody to the respondent, we do not address the petitioner's counterclaim for increased child support.

AFFIRMED.