IN THE COURT OF APPEALS OF IOWA

No. 3-094 / 92-1380

FILED
SEP 2 1993
CLERK SUPREME COURT

IN RE THE MARRIAGE OF CHRISTINE I. BRUGGENWIRTH AND TERRY L. BRUGGENWIRTH

Upon the Petition of

CHRISTINE I. LINGLE f/k/a CHRISTINE I. BRUGGENWIRTH,

000053

Appellant,

And Concerning

TERRY L. BRUGGENWIRTH,

Appellee.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge.

Former wife appeals from a modification of the parties' dissolution decree which orders her to pay child support. **AFFIRMED AS MODIFIED.**

Edward J. Kross of Shaff, Van Scoy & Kross, Clinton, for appellant.

William Vilmont of Holleran, Shaw, Murphy & Stoutner, Clinton, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

000054

PER CURIAM

Christine and Terry were married in 1973 and divorced in 1988. The parties were awarded joint custody of their four minor children: Brad, born in 1973 and now emancipated; Erik, born on March 10, 1975 (who at the time of this modification hearing was residing in a state institution); Adam, born on July 19, 1981; and Tara, born on August 22, 1984. Christine originally was awarded primary physical care of all four children. On December 22, 1989, a court order transferred the physical care of Brad to Terry.

In the summer of 1991, Terry and Christine entered into a stipulation that the custody of the three minor children would be transferred from Christine to Terry. The stipulation also stated Terry would receive no child support at that time from Christine. On September 27, 1991, the district court granted an application to modify the dissolution decree, transferring physical care of the three minor children to Terry. Christine did not oppose the modification, which also terminated Terry's child support obligation but made no provision for Christine to pay child support. The district court did not state its reason for not ordering Christine to pay child support.

In February 1992, Terry filed an application for modification of the dissolution decree seeking child

support from Christine. On July 28, 1992, the court granted his application, ordering Christine to pay $108 per week. The district court found that this amount should increase to $126 per week when Erik returns to his father's home. Christine 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).

In ordering Christine to pay child support, the district court found, inter alia, a substantial change of circumstances existed because the September 27, 1991, decree deviated from the uniform child support guidelines without stating a reason. See Iowa Code § 598.21(4)(a), (9) (1991).

Christine, however, contends the district court erred in modifying the decree because an enforceable agreement existed that Terry would waive child support. She claims that her agreement to transfer physical care provides

consideration to enforce Terry's promise not to seek child support. The district court found the agreement, if it existed,[1] was unenforceable because it was not in the best interests of the children. See Webb v. Iowa Dist. Court, 416 N.W.2d 95 (Iowa App. 1987).

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). Divorced parents may contract between themselves as to the support of their minor children if the best interests of the children are not injured thereby. In re Sundholm, 448 N.W.2d 688, 690 (Iowa App. 1989) (citing Erwin v. Erwin, 105 N.W.2d 489, 491 (Iowa 1960)). However, in Anthony v. Anthony, 204 N.W.2d 829, 833 (Iowa 1973), the Iowa Supreme Court held an agreement by which a divorced custodial parent waived the right to child support in return for the noncustodial parent's promise not to exercise his visitation rights was void as contrary to public policy. In its opinion, the court noted:

> Nor can we permit a custodial parent lightly to bargain away his child's right to support. The child's best interest is paramount here also. Public interest is also involved. Parents are legally obligated to support their children.

Id. (citations omitted).

---

1. Terry argues that no such agreement existed; however, he testified at trial that he read and signed a custody stipulation "that said no child support at this time."

The court in Anthony found an agreement which is injurious to the best interests of the child is invalid for any purpose. In re Marriage of Sundholm, 448 N.W.2d 688, 690 (Iowa App. 1989). The agreement in Anthony was specifically found to be void as contrary to public policy because it made the child's best interest subservient to parental self-interest. Id.

The district court found that it was not in the minor children's best interest to relieve Christine of her child support obligation. We see no reason to disturb that finding on appeal. We affirm the trial court on this issue.

The district court ordered Christine to pay $108 per week while the two children were living with Terry and $126 per week when Erik returns to Terry's home. The district court based this calculation on Christine's annual gross earnings of $25,000 and Terry's of $27,000.

On our de novo review we note that Erik is now residing in Terry's home, and we calculate Christine's net monthly income accordingly. We find that her net monthly income is $1515.67; Terry's net monthly income is $1576.86. Applying the guidelines for three children, we conclude Christine must pay $122.30 per week.

AFFIRMED AS MODIFIED.