FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PATRICIA MAURINE TAYLOR AND ROBERT AUBURN TAYLOR

398

Upon the Petition of)
PATRICIA MAURINE TAYLOR,)
Petitioner-Appellee,)
And Concerning)
ROBERT AUBURN TAYLOR,) 9-78 / 88-1039
Respondent-Appellant.)

Appeal from the Iowa District Court for Lee County (837(N)1085), William S. Cahill, Judge.

Respondent appeals the trial court's denial of his petition to modify the decree of dissolution entered in this case. **AFFIRMED.**

Ray Sullins, Des Moines, for respondent-appellant.

Carl A. Saunders of Saunders, Humphrey, Johnson & Hoyer, Fort Madison, for petitioner-appellee.

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

SCHLEGEL, J.

309

Respondent, Robert Taylor, appeals the trial court's denial of his petition to modify the decree of dissolution entered in this case on January 29, 1986. He seeks modification of the physical custody of the two children of this marriage. The trial court found that there had not been a change of circumstances shown, sufficient to change the custody from the petitioner, Patricia, to the respondent, Robert. The court found, however, that the evidence showed a change of circumstances as to Robert's financial situation, such as to permit a modification of the child support payable by Robert from $35 per week per child to $50 per week per child.

The two children involved in this mater are Julia, born October 3, 1971, and Andrew, born October 3, 1978. Julia reached age 17 on October 3, 1988, and has expressed a strong desire to remain with her mother. Andrew, who became ten on October 3, 1988, has likewise expressed a desire to remain with his mother.

Our paramount consideration in determining custody is the best interests of the child. Prior cases have little precedential value. We must base our decision primarily on the particular circumstances of the parties in each case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The moving party in a modification action carries a heavy burden when seeking a change in custodial provisions

of a dissolution decree. 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).

To change the custodial provision of a dissolution decree, the applying party must establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interest 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.

In this case, the trial court found that there was not a material and substantial change in circumstances so that the children's best interests made it expedient to make the requested change. The court did not find that Robert had proved an ability to minister more effectively to the children's well being. Upon our de novo review, we agree with the trial court's findings.

Patricia and Doug Anderson acknowledge that they are husband and wife, by common law. They live together, with the two children under consideration here, Doug's son by a prior marriage, Michael, and a daughter born to Patricia and Doug, Destiny. At the time of trial they were also the temporary custodians of two children of Patricia's brother,

who were in need of temporary care and housing due to illness of their paternal grandmother, their permanent custodian. The record indicates that they all live as a family, and that although they are not possessed of great financial security, they get along on money from a settlement of Doug's motorcycle accident, and ADC grants and food stamps.

Robert asserts, in argument, that "[t]he home is infested with drugs and violence." The record fails to support this assertion. There is no evidence that Patricia has ever subjected herself or her children to drugs. While there was an incident of domestic violence between Patricia and Doug, in spite of the protestations of both Doug and Patricia that they were playing, there is no evidence that such is a standard practice or that it has occurred on any other occasion. It is apparent that Doug has problems with alcohol abuse in the past, but the record indicates that problem has been addressed. He is now a full time student at a local community college, studying refrigeration and air conditioning, and the record indicates that he pursues his studies with appropriate attention and enthusiasm.

There is no doubt that Robert's financial condition is superior to Patricia's. This, however, is not a sufficient reason for a change in custody. The record fails to show that with that superior financial condition, Robert would minister to the needs of the children in a superior fashion.

The children's desires to remain with their mother is not conclusive on where they should reside. In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979). It is, however, entitled to consideration. Julia became seventeen years of age on October 3, 1988. She expresses a desire to remain with her mother. Her two-month stay with her father in California was not a happy experience for her, and she prefers not to experience that situation again. At her age, it would not be in her interest to insist upon a change of residence, school, and associations. Likewise, Andrew, a child with some health problems, will benefit from continued residence with his mother, who is aware of his health problems and his health needs. Robert's failure to pay child support on a current basis throughout the time since the decree, and his failure to respond to Patricia's requests for necessary medical forms and the fulfillment of his decree obligations concerning medical expenses do not demonstrate the type of concern for his children's security that he now professes.

We affirm the trial court's ruling that Robert has failed to prove a substantial change in circumstances such as to make it proper to modify the custody provisions of the decree.

Robert also appeals the court's modification of the decree as to the amount of his child support obligations. The court found that there was a substantial change in

circumstances as to the support feature of the decree. The court pointed out, and the record supports the finding, that there was no knowledge of the financial condition of Robert, at the time of the decree. Upon this hearing, his financial condition became apparent. The change of circumstances therefore were not in the contemplation of the court. Frederici, 338 N.W.2d at 158. We affirm the trial court's order increasing Robert's child support obligations to $50 per week per child.

Our review of these dissolution actions, being at equity, is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, although we are not bound by them. Our supreme court has stated:

> There is good reason for us to pay very close attention to the trial court's assessment of the credibility of witnesses. A trial court deciding dissolution cases "is greatly helped in making a wise decision about the parties by listening to them and watching them in person." In re Marriage of Callahan, 214 N.W.2d 133, 136 (Iowa 1974). In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented. [Citations omitted.]

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). In this case, there were instances where the court did not believe Robert or Patricia. The court, however, in weighing the evidence, decided, as do we, that there were inadequate grounds to make a change in the physical custody of these two children.

The trial court awarded Patricia $400 on her attorney fees in the trial court, and she asks for attorney's fees on this appeal. Robert is ordered to pay the sum of $500 for appellate attorney's fees. The costs of this appeal are taxed against Robert.

AFFIRMED.