IN THE COURT OF APPEALS OF IOWA

No. 6-236 / 95-0618

FILED
MAY 31 1996
CLERK SUPREME COURT

IN RE THE MARRIAGE OF LARRY WALTER CROOKS AND CATHERINE SUE CROOKS

Upon the Petition of
LARRY WALTER CROOKS,

Appellant,

And Concerning
CATHERINE SUE CROOKS,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Leo Connolly, Judge

Larry Crooks appeals a district court order granting Catherine Crooks temporary custody of their minor children pursuant to Catherine's modification action. **REVERSED AND REMANDED.**

Roger J. Hudson and Brent A. Cashatt of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, until their withdrawal, and then Larry Walter Crooks, Des Moines, pro se, for appellant.

Brian J. Muench, Omaha, Nebraska, for appellee.

Considered by Cady, P.J., and Huitink and Streit, JJ. Vogel, J., takes no part.

HUITINK, J.

Larry Crooks appeals a district court order granting Catherine Crook's temporary custody of two of the parties' minor children pending resolution of Catherine's application to modify the custodial provisions of the parties' dissolution decree.

Larry and Catherine were married in 1981. They have three minor children: Brandy, born August 8, 1981; Scott, born May 6, 1983; and Nicole, born January 22, 1986. The January 31, 1994, decree dissolving this marriage awarded Catherine sole custody of all the children subject to Larry's right to supervised visitation.

Larry appealed the district court's custodial decision. On appeal, we modified the custodial provisions of the decree by awarding joint custody and placing physical care with Larry. *See In re Marriage of Crooks*, No 94-365 (Iowa App. Jan. 23, 1995). Catherine did not seek further review of our decision by the supreme court Procedendo directing the district court to proceed in accordance with our decision followed on February 13 1995

On February 15 1995 Catherine filed an application with the district court to modify the custodial arrangement resulting from our January 23, 1995, decision In her application Catherine cited Larry's alleged neglect of the children and his disregard of the district court's custodial orders during the time his appeal was pending as circumstances necessitating modification of our custodial decision. The application

also included a request for temporary custody and a provision setting a hearing on temporary matters on February 28, 1995.

The record indicates that an unreported hearing was held on February 28, 1995, and that both parties appeared at this hearing by their respective attorneys. It appears the temporary custody issue was submitted on affidavits filed by Catherine on February 15, 1995, and by Larry on March 2, 1995. The temporary order issued March 10, 1995, included a finding that the children had resided with Catherine since July 1994 and it was in their best interests to remain with her pending the outcome of the modification proceeding Larry appeals, citing our decision awarding him physical care and the absence of any evidence of a substantial and material change of circumstances

Our review is de novo Iowa R App P 4 We give weight to the trial court's findings of fact particularly when the credibility of witnesses is implicated Iowa R App P 14(f)(7) We are, however, not bound by these determinations. *Id.* Prior cases have little, if any, precedential value and we must base our decision primarily on the circumstances of the parties before us *In re Marriage of Weidner*, 338 N W 2d 351, 356 (Iowa 1983)

As stated earlier, this case reaches us following entry of a temporary custody order in a modification proceeding The authority of the district court to enter temporary custody orders in modification proceedings is not an issue. We will

therefore presume, for purposes of this opinion, that Catherine's application for temporary custody invoked the district court's inherent equitable authority to resolve child custody disputes. *See Helton v. Crawley*, 241 Iowa 296, 311-14, 41 N.W.2d 60, 70-72 (1950).

This is not an original custody proceeding. Custody of these children has been litigated in the district court and finally resolved on appeal. Once custody and physical care of children has been fixed, it should be disturbed only for the most cogent reasons. *In re Marriage of Bugg*, 492 N.W.2d 2d 452, 454 (Iowa App. 1992). In determining whether to modify a custody arrangement the focus is on the long-range best interests of the children. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). The party requesting a change of custody bears the heavy burden of showing a substantial change of circumstances evidencing that party's superior ability to minister to the children's needs. *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 213 (Iowa App. 1994). *In re Marriage of Ivins*, 308 N.W.2d 75, 78 (Iowa 1981) We believe, in the absence of the most compelling circumstances, that the foregoing principles are equally implicated in temporary and final custody determinations in a modification proceeding To hold otherwise would foster the disruptive circumstances these rules were designed to avoid

The district court's temporary order was entered within a matter of weeks following our decision modifying its original custody determination. The order was

apparently based on Catherine's allegations that Larry neglected the children and disregarded the district court's earlier custodial orders. Larry has denied these allegations, and there is no other evidence in the record to support them. Under these circumstances, we find Catherine's evidence falls far short of the proof necessary to sustain her heavy burden. The district court's temporary order awarding custody to Catherine is therefore reversed. This case is remanded to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.