IN THE COURT OF APPEALS OF IOWA

No. 6-209 / 95-1607

000247

IN RE THE MARRIAGE OF DEBORAH L. RAANES AND EUGENE W. RAANES

Upon the Petition of

DEBORAH L. RAANES,

Petitioner-Appellee,

And Concerning

EUGENE W. RAANES,

Respondent-Appellant.

FILED
APR 23 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge.

Eugene Raanes appeals from a district court order refusing to modify the child custody provisions of the decree dissolving his marriage to Deborah Raanes. **AFFIRMED AS MODIFIED.**

G. Elizabeth Otte, Council Bluffs, for appellant.

Kimberly Wahl-Taylor, Council Bluffs, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

Respondent-appellant Eugene W. Raanes appeals from a district court order refusing to modify the child custody provisions of the decree dissolving his marriage to petitioner-appellee Deborah L. Raanes. Eugene contends the district court should have found Deborah's decision to move with the children from Iowa constituted a substantial change of circumstances warranting a modification of the decree to grant him physical custody, and he should not have been ordered to pay all transportation costs associated with the children's visitation. We affirm as modified.

Eugene and Deborah were married in 1983. They have three children, Tiffany, born December 26, 1983; Kenneth, born November 28, 1985; and Andrea, born May 31, 1988. Their marriage was dissolved in September 1994. The decree awarded Eugene and Deborah joint legal custody of the children and gave primary physical care to Deborah. The court awarded Eugene liberal visitation.

On May 25, 1995, Deborah filed a petition for modification seeking additional alimony. The petition alleged Deborah was required to pay debts incurred during the marriage because Eugene filed chapter 7 bankruptcy. Eugene filed a cross-application asking for primary physical care of the children. The parties resolved the financial issues by a settlement requiring Eugene to pay Deborah $5000 in alimony. The trial court heard evidence on the child custody issue and denied Eugene physical care. The court found Deborah's move was occasioned by serious financial difficulties caused in part by Eugene's bankruptcy. The court found Deborah had family

members in Texas who could provide needed support. The court awarded Eugene five weeks visitation over the summer period and a week during the Christmas and spring breaks. The court ordered Eugene to pay all transportation costs.

Eugene appeals. He asserts Deborah's proposed move to Texas is retaliation for his filing a bankruptcy petition. He argues Deborah has tried to undermine his relationship with the children and has improperly denied him visitation on occasion. He also believes, regardless of the outcome of the primary care issues, the parties should be required to share the transportation costs associated with visitation.

We review de novo. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). To justify a modification to change physical care, Eugene must show by a preponderance of the evidence the conditions since the decree was entered have materially and substantially changed and he is the superior parent. *See In re Marriage of Gravatt*, 371 N.W.2d 836, 838 (Iowa App. 1985). Eugene's burden is heavy for once custody is fixed, it is changed only for compelling reasons. *In re Marriage of Melton*, 256 N.W.2d 200, 205 (Iowa 1977).

Eugene contends Deborah is moving in retaliation and to limit his contact with the children. He points out on some occasions she has tried to limit his visitation and has kept the children from planned activities.

We recognize there is evidence Deborah blocked visitation when she learned Eugene was not able to pay debts he had assumed in the decree. This evidence impacts adversely on her claim her move is not to keep Eugene from the children. If

visitation rights of a noncustodial parent are jeopardized by a custodial parent, this may justify a change of physical care. *See In re Marriage of Quirk-Edwards*, 509 N W.2d 476, 477 (Iowa 1993); *see also* Iowa Code § 598.41 (1993).

We consider, however, the mobility of society and will not change physical care where there is evidence a custodial parent has valid reasons for moving and the move is not just an attempt to limit the other parent's access to the children. *See In re Marriage of Frederici*, 338 N.W.2d 156, 159-60 (Iowa 1983); *In re Marriage of Weidner*, 338 N.W.2d 351, 360-61 (Iowa 1983); *In re Marriage of Deck*, 342 N.W.2d 892, 895 (Iowa App. 1983).

In assessing whether there is a valid reason for the move, we look to the motivation for the move, the circumstance of the new home, as well as the impact the move will have on the children and their relationship with the noncustodial parent. *See Quirk-Edwards*, 509 N.W.2d at 479; *Frederici*, 338 N.W.2d at 160.

The trial court found Deborah would have the assistance of extended family and additional economic opportunities in making the move. The record supports these findings and we agree with the trial court's decision to refuse to modify custody.

We agree with Eugene he should not have sole responsibility for transportation costs and modify to order these be shared equally. Eugene shall pay transportation costs to bring the children to Iowa. Deborah shall pay the costs of returning the children to Texas.

Deborah requests attorney fees on appeal. Each party shall pay his or her own attorney fees. Costs on appeal are taxed to Eugene.

AFFIRMED AS MODIFIED.