IN THE COURT OF APPEALS OF IOWA

No. 6-656 / 96-0230

IN RE THE MARRIAGE OF NANCY SUE KIELKOPF AND JOEL BLAINE KIELKOPF

Upon the Petition of
NANCY SUE KIELKOPF n/k/a
NANCY SUE McGOUGH,

Petitioner-Appellee,

And Concerning
JOEL BLAINE KIELKOPF,

Respondent-Appellant.

FILED
NOV 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

Joel Kielkopf appeals from a district court order refusing to modify the custody provision of the parties' dissolution decree. **AFFIRMED.**

Henry E. Nathanson of Johnston, Potterfield & Nathanson, P.C., Cedar Rapids, for appellant.

Gregory J. Epping of Terpstra, Terpstra & Epping, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a father claiming the district court should have modified the parties' dissolution decree to grant him custody of their two children. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

A decree of dissolution was entered for Joel (Blaine) and Nancy Kielkopf on November 23, 1987. The decree granted Nancy primary physical care of the parties' two children, Derek, born on December 18, 1980, and Dustin, born on July 31, 1982. Blaine was ordered to pay child support and was granted very liberal visitation.

Nancy married Jim McGough in November 1991. Derek and Dustin had some problems getting along with Jim, and the boys started spending more time with Blaine. On April 23, 1994, Blaine filed an application for modification of the dissolution decree, seeking primary physical care of the children. Nancy also filed an application for modification, seeking a more specific visitation schedule and increased child support.

The district court denied Blaine's request to transfer custody of the children. The court did set forth a more specific visitation schedule and increased Blaine's child support under the child support guidelines. Blaine now appeals.

Blaine claims the district court should have modified the parties' dissolution decree to grant him physical care of the children. He states both children expressed a desire to live with him. He believes the court ignored the children's preferences and did not give this factor sufficient weight.

A party seeking modification of custody has the burden to show a substantial change in circumstances. *In re Marriage of Weidner*, 338 N.W.2d 351, 361 (Iowa 1983). A parent must also prove an ability to minister more effectively to the children's well being. *In re Marriage of Howe*, 471 N.W.2d 902, 903 (Iowa App. 1991). In considering what custody arrangement is in a child's best interests, the court should consider the child's wishes, taking into account the child's age and maturity. *In re Marriage of Bugg*, 492 N.W.2d 452, 454 (Iowa App. 1992).

On our de novo review, we consider the children's preference to live with Blaine as one factor to be considered. We agree with the district court, however, that in considering all of the factors in this case, Blaine has not met the heavy burden necessary to modify a custodial arrangement. Both parents in this case are very interested in the children and would be excellent custodial parents. The children have done very well in Nancy's care. Nancy has obtained special academic tutoring for the children, and has attempted to involve the children in counseling to improve their interaction with Jim.

Nancy seeks attorney fees for this appeal. We determine Blaine should pay $1000 for her appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Blaine.

AFFIRMED.