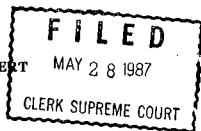


IN THE COURT OF APPEALS OF IOWA
IN RE THE MARRIAGE OF MARGARET E. ELGERT
AND ERICH R. ELGERT



Upon the Petition of)

MARGARET E. ELGERT,)

Petitioner-Appellee,)

And Concerning)

ERICH R. ELGERT,)

Respondent-Appellant.)

Filed May 28, 1987

7-44
86-1114

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Appeal from the Iowa District Court for Woodbury County (No. 9257),
Richard J. Vipond, Judge.

Respondent former husband appeals from the trial court's ruling on his
petition for modification of the decree dissolving the parties' marriage.
AFFIRMED.

Raymond O. Snook of Glidden for appellant.

Robert G. Scoville of Ryan & Scoville, South Sioux City, Nebraska, for
appellee.

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

OXBERGER, C.J.

The appellant in this action, Erich Elgert, challenges the trial court's order denying his petition for modification of the decree dissolving his marriage to the appellee, Margaret Elgert Saltsgiver. The record discloses that the parties' marriage was dissolved in March of 1985. Pursuant to the original decree, the parties were granted joint custody of their two minor sons, Jay and Matthew, then ages fifteen and seven, respectively. In addition, the dissolution court divided the physical custody of the boys, naming Erich physical custodian of Jay and Margaret physical custodian of Matthew. The court further ordered that the parties were to promote liberal visitation both between themselves and among the boys.

In July of 1985, Erich filed a petition seeking to modify the decree, alleging that the separation of the boys was contrary to their best interests; in October of that year, a hearing was held and the petition was denied. In November of 1985, Erich again petitioned for modification asserting the identical grounds. Before the hearing on the second petition was held, Margaret had her attorney notify Erich of her intention to accept a new job in Arizona; in January of 1986, Margaret and Matthew moved to Arizona. At the hearing on the second petition, Erich argued that Margaret's decision to move constituted a substantial change in circumstances warranting modification of the decree. Specifically, Erich asserted that he should be named physical custodian of Matthew because the geographic distance between the boys was not in their best interests. The trial court denied Erich's request, and we affirm.

The principles governing our review are well established. A party seeking to modify the custodial provisions of a dissolution decree bears the burden of proving that the circumstances since the entry of the decree have so materially and substantially changed that the child's best interests make it expedient

that different terms be fixed. In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983); see also In re Marriage of Leyda, 355 N.W.2d 862, 864 (Iowa 1984) (identical principles govern both a requested modification of custody and a requested modification of physical care). It is incumbent upon the party requesting modification to establish that the change in circumstances was not contemplated by the trial court when the decree was entered, that the change is permanent rather than temporary in nature, and that it affects the child's welfare. Frederici, 338 N.W.2d at 158. In determining whether the requisite showing has been made, we review the record de novo. In re Marriage of Leyda, 355 N.W.2d at 864. We have done so in the present case, and conclude that Erich has failed to satisfy his burden of establishing that the decree should be modified.

Although we acknowledge that Erich's concern about the separation of Jay and Matthew is commendable, we cannot agree with his assertion that their best interests demand modification of the decree. Certainly, Erich is correct in noting that the courts of this state ordinarily endeavor to keep children of broken homes together. See In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981). Nevertheless, this rule is not ironclad, and we have recognized that in certain circumstances, the long-range best interests of individual children may require the separation of siblings. Id; see also In re Marriage of Wahl, 246 N.W.2d 268, 270 (Iowa 1976). The trial court that dissolved Erich and Margaret's marriage found this to be such a case.

In passing upon Erich's request for modification, it is incumbent upon us to consider a vast array of factors which in conjunction reveal what the boys' best interests require. See In re Marriage of Leyda, 355 N.W.2d at 865; see also In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974); Iowa Code § 598.41(3) (1985). In this connection, we think that the following facts

are particularly significant: The record discloses that Matthew and his mother enjoy a close relationship and that Matthew has prospered both physically and emotionally under Margaret's care. In addition, Matthew shares a similarly healthy relationship with Margaret's second husband. Moreover, both Margaret and the boys' attorney testified that Matthew is happy in Arizona and prefers to reside there with Margaret. Furthermore, although it cannot be disputed that the geographic distance between the parties has reduced Matthew's opportunity to visit with both Jay and Erich, Margaret testified that her increase in income will permit frequent visitation. Moreover, it is uncertain whether Erich's requested modification would in fact remedy the separation of the boys; at the time of the hearing, Jay was a junior in high school and did not know whether he would remain with his father after graduating.

After considering the evidence delineated above, we are simply not persuaded that the move constitutes a substantial change of circumstances requiring modification of the decree. Our foremost consideration is the promotion of the boys' best interests; having reviewed the record, we are convinced that their interests are best served if Matthew is permitted to reside with Margaret. Accordingly, we affirm.

AFFIRMED.