

IN THE COURT OF APPEALS OF IOWA

No. 0-317 / 89-1169

FILED

SEP 26 1990

CLERK SUPREME COURT

IN RE THE MARRIAGE OF DEBRA ANN SNYDER AND ~~STEPHEN J. SNYDER~~

Upon the Petition of
DEBRA ANN SNYDER, n/k/a DEBRA ANN FRANCIS,

Appellee,

And Concerning
STEPHEN J. SNYDER,

Appellant.

Appeal from the Iowa District Court for Johnson County,
Lynne E. Brady, Judge.

Husband appeals a district court's denial to modify his
dissolution decree. **AFFIRMED.**

Stephen J. Snyder, appellant, pro se.

Daniel L. Bray of Bray & Richard, Iowa City, for
appellee.

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

OXBERGER, C.J.

Debra and Stephen Snyder were married in 1978. Three daughters were born to the couple.

The marriage was dissolved in 1988. The dissolution decree placed the three children in joint legal custody and in Debra's primary physical care. The decree also directed Stephen to pay child support of \$200 per month per child. Following the dissolution, Debra married Thomas Francis and is currently married to Thomas.

Stephen filed the present petition to modify the dissolution decree. He asked that primary care of the children be transferred to him. In the alternative, he asked that his visitation be increased and his child support obligation reduced. Debra filed a cross-application for modification, asking that Stephen's visitation be reduced.

After a hearing, the district court declined to modify the decree in any respect, finding no substantial change in circumstances since the original decree of dissolution and dismissed both parties' applications. Stephen has appealed.

In reiterating his request for primary physical care of the children or visitation be increased and his child support obligation be decreased, Stephen alleges numerous changes of circumstance since the dissolution, including his employment and the influence exerted on the children by Thomas. In addition, Stephen contends the district court

erred by refusing to allow him to call his oldest child, Amber, as a witness.

Our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

In discussing applications to modify custodial provisions in dissolution decrees the Court has stated:

To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citing In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980)).

In order for a modification to be ordered for a support obligation a substantial change in circumstances that is permanent or continuous rather than temporary must be shown. In re Marriage of Shepherd, 429 N.W.2d 145, 147

(Iowa 1988). The burden rests on the proponent of the modification to show by a preponderance of the evidence that a substantial change of circumstances has occurred. Holland v. Holland, 260 Iowa 248, 247, 149 N.W.2d 124, 125 (1967). In In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987), our supreme court stated:

[C]urrent inability has become less a consideration and long-range capacity to earn money has become more of a consideration; and . . . any voluntariness in diminished earning capacity has become increasingly an impediment to modification.

After evaluating the record, we conclude that the trial court correctly found no substantial change in circumstances in any respect from the original dissolution decree. We also agree with the trial court's observation that in this case there are no winners, only losers and the children lose the most. The record shows embittered and vindictive adults allowing young children to become embroiled in their disputes.

Stephen failed to carry his heavy burden of showing a substantial change in circumstances warranting any change in custody. Nothing in the record suggests that a change in custody would stop the fighting or that Stephen could minister more effectively to the childrens' needs. Further, Stephen failed to show that his lowered income is a permanent or continuous condition and not the result of a voluntary reduction. The trial court watched the presentation of evidence and we believe the record

substantiates the trial court's findings. Consequently, we affirm the trial court's order dismissing both parties' applications for modification.

We also find no abuse in the trial court's decision to not allow Stephen to call his daughter Amber to rebut her mother, Debra's testimony. Debra presented to the court a report prepared by a child therapist familiar with Amber stating that Amber's forced testimony would be detrimental to her. A child should not be further devastated by her parent's legal battles by requiring her to testify about the truthfulness of her parent's statements.

Debra requested attorney's fees and that Stephen pay the costs of the appendix on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Accordingly, we order Stephen to pay \$750 towards Debra's appellate attorney fees and tax the cost of this appeal against Stephen. Since we tax the cost of appeal against Stephen we need not address Debra's request regarding the cost of the appendix. See Iowa R. App. P. 15(b).

AFFIRMED.