IN THE COURT OF APPEALS OF IOWA

No. 2-441 / 91-1119

IN RE THE MARRIAGE OF STEVE L. JENNINGS AND DANETTE V. JENNINGS

FILED
NOV 30 1992
CLERK SUPREME COURT

Upon the Petition of

STEVE L. JENNINGS,

Appellee,

And Concerning

DANETTE V. JENNINGS,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

Wife appeals from the district court's modification of her dissolution decree. **AFFIRMED AS MODIFIED.**

Steve Andreasen of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, for appellant.

Jeffrey T. Myers, Sioux City, for appellee.

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

OXBERGER, C.J.

On October 18, 1990, a district court judgment and decree dissolved the marriage of Steve and Danette Jennings. The parties stipulated to shared physical care of the parties' two children: Jacqui, born June 26, 1981, and Luke, born December 7, 1985. The district court ordered Steve to pay child support and alimony. Both parties resided in Woodbury County.

In December 1990, Danette learned that her employer, America West Airlines, was closing its local office. She was offered a position with the airline in California. Danette accepted the transfer and now lives in Orange County, California where she works full time for America West Airlines. Her net income is approximately $990 per month.

Steve, age thirty-three, is a high school graduate who currently works as a self-employed hearing aid dealer. His net income is approximately $1,800 per month. He has established a new family, including a new spouse and her three children by a previous marriage. His child support obligation is approximately three months in arrears.

Upon learning of the changes in Danette's employment, Steve filed a petition for modification and requested that Danette be restrained from removing the children from this jurisdiction. Thereafter, Danette filed an application to modify visitation, requesting she be awarded primary

physical care of the two children and Steve be awarded reasonable visitation rights.

On February 8, 1991, the district court enjoined Danette from removing the minor children from its jurisdiction. On March 12, 1991, Danette filed an application for rule to show cause why Steve should not be held in contempt for failure to pay back child support. All of the pending motions proceeded to a hearing before the district court.

The district court awarded primary physical care to Steve and visitation rights to Danette. Also, the district court ordered Danette to pay $150 per month in child support. The court made no determination as to Danette's motion to show cause why Steve should not be held in contempt for his failure to stay current on his child support obligation. However, the court did acknowledge Steve's failure to meet his financial obligations in its findings of fact. Danette appeals.

Scope of Review

In this equity action, 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).

I. Physical Child Care

Both parties petitioned for modification of the original decree awarding joint physical care and neither party challenges the existence of a substantial change in circumstances not within the contemplation of the court at the time the decree was filed. We, too, find Danette's relocation to California a substantial change in circumstances not within the contemplation of the court at the time the decree was issued. We now turn to the issue of physical care 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. In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983). In this case, both Danette and Steve are seeking to take physical care from the other and accordingly, we find neither party carries a greater burden in proving a greater ability to minister to the children's well being.

Change in a custodial parent's geographical location is not alone justification for a change in custody. Frederici, 338 N.W.2d at 160; In re Marriage of Behn, 416 N.W.2d 100, 101 (Iowa App. 1987). However, it is a permissible factor to consider in determining which parental environment will provide the most stability and security to the children. In re Marriage of Scott, 457 N.W.2d 29, 31 (Iowa App. 1990).

Our compelling concern in any case involving the care and custody of children is the long-term best interest of the children. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). Additionally, because this case involves a potential geographical change for the children, we consider all of the surrounding circumstances of the move. These include the reason for the move, location, distance, comparative advantages and disadvantages of the new environment, and impact on the joint custodial and access rights of the other parent. See Frederici, 338 N.W.2d at 160.

Our de novo review of the record shows both Danette and Steve are nurturing, loving parents who cooperated with one another throughout their joint care arrangement. Prior to the original dissolution, Danette provided most of the care for the children. She arranged her part-time employment as a church secretary to allow her to be available to meet the children's needs. We note Danette was awarded rehabilitative alimony in the original decree because of the economic sacrifices she made to care for the parties' children. We also note Danette was awarded child support even though the parties had joint physical care. The trial court reasoned that Danette would continue to provide for many of the basic needs of the children, would make most purchases for the children and the children would come to her home each day after school, even when they were in the physical care of their father.

In addition, we adopt most of the findings of the district court in the modification decree. The district court found Danette's "planned community apartment home" provided convenient access to neighborhood schools. The information provided on available schools established to the district court that the availability of good schools and educational opportunities was not an issue at either parent's residence. Although Danette has a history of an eating disorder, the district court found her marriage to Steve may have been a contributing factor to that illness. The district court concluded Danette had sought treatment and remained "symptom-free" of her eating disorder since her treatment. The district court also noted Steve's allegations about Danette's instability were not accompanied by any attempt to gain assistance for her, nor did he raise the issue at the time of the dissolution.

The district court also found Steve failed to meet his child support and alimony obligations but instead chose to satisfy his desire for luxury items. In fact, the district court found Steve assisted in precipitating Danette's financial crisis. We note it was that financial crisis which contributed to Danette's decision to move to California for gainful employment. The district court also found Steve's financial affairs appeared manipulated and convenient in their confusion of ownership and responsibility. The court noted Steve had experienced

prior problems with excessive drinking and use of prescription medication. Finally, the district found Danette was inclined to seek professional help and support for problems while Steve chose to avoid continued counseling.

In addition to the findings of the district court, we note Danette provided for the daily needs of the children throughout the marriage. This practice continued during the time of joint physical care. Presently, Danette has numerous family members living in the Orange County area and provided evidence of appropriate child care arrangements with her twin sister. There is no evidence Danette's move is motivated by a desire to take the children from their father. While we acknowledge the initial trauma often associated with a move to unfamiliar surroundings, Danette has demonstrated an ability to assist the children in their adjustment.

Based on the findings of the district court, coupled with our own, we modify the district court. We grant Danette physical care of the children and give Steve liberal visitation rights.

Accordingly, we modify the district court's child support award. The district court found Steve's monthly earnings to be approximately $1,800 and Danette's to be approximately $990. We utilize the Uniform Child Support Guidelines and order Steve to pay Danette $553 per month in

child support. Steve must deposit his support with the Clerk of the District Court in and for Woodbury County by the 10th day of each month until the children are 18 years of age, married or otherwise emancipated.

II. Contempt Application

Danette also contends the district court erred in failing to rule on her application requesting Steve be held in contempt of court for failure to pay child support pursuant to the court order. However, Danette did not file a motion requesting the court to enlarge or amend its findings pursuant to Iowa Rule of Civil Procedure 179(b). Therefore, this argument has not been properly preserved for our review. Estate of Grossman v. McCreary, 373 N.W.2d 113, 114 (Iowa 1984).

AFFIRMED AS MODIFIED.