IN THE COURT OF APPEALS OF IOWA

No. 6-356 / 95-2149

IN RE THE MARRIAGE OF SHAWN LEE BOOK AND ERIC LANCE BOOK

Upon the Petition of
ERIC LANCE BOOK,

Petitioner-Appellant,

And Concerning
SHAWN LEE BOOK n/k/a SHAWN LEE SHATTUCK,

Respondent-Appellee.

FILED
JUN 27 1996
CLERK SUPREME COURT

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

Eric Book appeals from the district court's denial of his petition to modify the custody provisions of the parties' dissolution decree. **AFFIRMED.**

Reed H. Reitz of Reimer, Lohman & Reitz, Denison, for appellant.

Stephen M. Engelhardt of Engelhardt Law Office, Denison, for appellee.

Heard by Sackett, C.J., and Habhab and Streit, JJ.

SACKETT, C.J.

Petitioner-appellant Eric Book appeals from the district court's denial of his petition to modify the custody provisions of the decree dissolving his marriage to respondent-appellee Shawn Lee Book. We affirm.

Eric and Shawn's marriage was dissolved in April 1992. By agreement, their daughter Erika was placed in Shawn's primary physical care. Eric and Shawn were awarded joint legal custody.

In November 1993, Eric filed a petition to modify the custody provisions of the dissolution decree alleging Shawn was in drug rehabilitation and not a suitable physical custodian.

Trial did not occur until October 17 and 18, 1995. At trial, Shawn acknowledged that in 1993 she had voluntarily entered drug treatment after abusing crank cocaine with Dan Shattuck, who she married in October 1995. She also acknowledged Dan had been physically abusive toward her earlier in 1995. Shawn testified she had not used drugs or alcohol since she completed treatment. Dan testified he had received treatment for substance abuse. He acknowledged he had been ordered to enter a program on domestic abuse counseling and had not yet attended. Several persons, in addition to Shawn, testified Eric had been physically abusive to Shawn and, on at least one occasion, had been physically abusive to Erika. Erika was described as happy, healthy, and well-adjusted.

The district court denied the modification finding, while Shawn's drug use would be a change in circumstances, it had been corrected by Shawn prior to the modification hearing, and if Eric were to have custody, Erika would spend substantial time with a child care provider.

Eric appeals. Eric contends Shawn's drug abuse and her current husband's physical violence and alcohol abuse constitute a substantial change of circumstances warranting a modification of the dissolution decree. Shawn seeks an award of appellate attorneys fees.

We review de novo giving weight to the fact findings of the trial court, especially when considering the credibility of the witnesses. *In re Marriage of Love*, 511 N.W.2d 648 (Iowa App. 1993). We are not, however, bound by these determinations. *Id.*

To modify the custodial provision of the dissolution decree, Eric bears a heavy burden. To change the custodial provision of the dissolution decree, the applying party must establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the children's interests make it expedient to make the requested change. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). The party seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. *Id.; see also In re Marriage of Gravatt*, 371 N.W.2d 836, 838-40 (Iowa App. 1985).

This burden stems from the principle that once custody of a child has been fixed, it should be disturbed only for the most cogent reasons. *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980).

Both Eric and Shawn love their daughter and are concerned about her care.

Shawn has been Erika's primary care giver. Shawn currently does not work outside the home. She cares for Erika and her younger half-brother. Throughout Shawn's problems, she has been responsible for her daughter. She sought treatment for her problem. There was testimony from Shawn's neighbor, who is an active participant in Alcoholics Anonymous, that Shawn is maintaining sobriety.

We have concerns about the problems of Shawn and her current husband. We also have concerns with the allegations of Eric's use of alcohol. Erika has fared well in Shawn's care despite Shawn's problems. If physical care is changed, Erika will spend considerable time with child care providers.

Eric has failed to meet the substantial burden necessary to modify the decree.

We award no attorneys fees.

We affirm.

AFFIRMED.