

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 26 1984

CLERK SUPREME COURT

IN RE THE MARRIAGE OF MICHAEL D. MASTIN AND LASONIA D. MASTIN

UPON THE PETITION OF
MICHAEL D. MASTIN,

Petitioner-Appellant,

Filed September 26, 1984

AND CONCERNING
LASONIA D. MASTIN,

Respondent-Appellee.

4-438
84-334

Appeal from the Iowa District Court for Polk County-Harry Perkins, Judge.

Petitioner husband appeals from district court ruling dismissing his application for modification of child custody provision of dissolution decree.

AFFIRMED.

Tim Pearson of Hyland, Laden & Pearson, P.C., Des Moines, for petitioner-appellant.

Virgil Moore, Des Moines, for respondent-appellee.

Heard by Snell, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Petitioner appeals from the district court ruling dismissing his application for modification of the child custody provision of a dissolution decree. Our review of this proceeding in equity is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). We affirm the decision of the district court.

In order to modify the child custody provision of a dissolution decree the burden is on the parent seeking the modification to show a material and substantial change in circumstances since the decree. Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). The change must be permanent rather than temporary, must not have been within the contemplation of the district court, and must relate to the welfare of the children. Id. at 139-40.

The marriage of petitioner, Michael Mastin, and respondent, LaSonia Mastin Jensen, was dissolved on August 14, 1981. The decree awarded custody of the parties' two sons, Trent and Brandon, to LaSonia. Michael was granted visitation. On August 26, 1982, Michael applied for modification of the custody provisions of the decree. At the time of the modification hearing the two boys were 12 and 10 years old, respectively.

Michael asserts that LaSonia's hatred of him and her attempts to discredit him in the eyes of the children are a sufficient change in circumstances to justify transferring to him custody of either both boys or just Trent. LaSonia admitted at the hearing that she hated Michael and that she had on occasion called him names in front of the children. There was also evidence that some of Michael's actions were designed to raise the level of confrontation between the parties.

We do not condone such animosity and name-calling since it is certainly detrimental to the children. See Wells v. Wells, 168 N.W.2d 54, 60 (Iowa 1969).

However, we agree with the district court that there has been no showing of a change in circumstances since the decree. There is no evidence in the record that the level of animosity between the parties has increased since the dissolution. On the contrary, the record indicates that the present spouses of both parties are a calming, stabilizing influence which may diffuse the tension between the parties.

AFFIRMED.