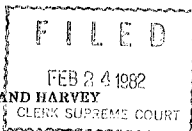


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF MARIANNE JULIA FREDERICK AND HARVEY
RICHARD FREDERICK

UPON THE PETITIONER OF)
MARIANNE JULIA FREDERICK,)
Petitioner-Appellee,)
AND CONCERNING)
HARVEY RICHARD FREDERICK,)
Respondent-Appellant.)

Filed February 24, 1982

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3-67068

Appeal from Dubuque District Court, L. John Degnan, Judge.

Both parties had applied for modification of their dissolution decree. The trial court modified the decree by transferring custody of one of the parties' three minor children from the husband to the wife. The trial court also awarded the wife child support for that child. The husband appealed. AFFIRMED AS MODIFIED.

Steven J. Hodge, Dubuque, for respondent-appellant.

Robert Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, Dubuque,
for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Both parties had applied for modification of their dissolution decree. The trial court modified the decree by transferring custody of one of the parties' three minor children from the husband to the wife. The trial court also awarded the wife child support for that child. The husband appealed. We affirm with modification.

In the modification, wife Marianne also requested acceleration of husband Harvey's obligation to pay her a property award of \$12,000. Harvey asked that he be given a child support award and that the property award be reduced.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977).

I. Child Custody.

The principal question is whether Marianne established by a preponderance of evidence that conditions, since the dissolution decree was entered, have so materially and substantially changed that the best interests of the children make it advisable to change custody.

The changed circumstances that Marianne relies upon must not have been within the trial court's contemplation when the decree was entered in March 1980, must be permanent and must relate to the children's welfare. Hobson v. Hobson, 248 N.W.2d 137, 139-40 (Iowa 1976). Additionally, it should be noted that once custody of children has been fixed, as in this case, it should be disturbed only for the most cogent reasons. See In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977).

Petitioner Marianne asserts that Harvey is encouraging a negative attitude in the children towards their mother. She asserts that the four older children have a definite lack of affection towards her and that their attitudes, combined with

Harvey's feelings, have a detrimental effect on the youngest child, Tammy Jo. Tammy Jo apparently still loves her mother and wants to have a relationship with her and, thus, Marianne wishes to at least have custody of her so as to preserve a healthy mother-daughter relationship while it is still possible.

At the time of the decree, it could not have been within the court's contemplation that such intense and negative feelings would develop to spoil the love that the children had for Marianne. One of the children even called her mother a "fucking bitch," and Harvey accused Marianne of "sleeping around," both incidents happening in front of the other children. Therefore we agree with the trial court's decision to remove Tammy Jo from an environment where, in her impressionable adolescence, she is subjected to such unhealthy attitudes about her mother. Furthermore, because of the unreasonable and arbitrary visitation requirement imposed on Marianne by Harvey, satisfactory visitation is made almost impossible. These conditions present an unsatisfactory environment and are of a sufficient magnitude to warrant a modification of custody.

II. Child Support.

The trial court modified the decree to provide that Harvey pay \$50 per week in support to Marianne for Tammy Jo. We think this is excessive and would overburden Harvey's financial resources. Marianne, remarried and working, can primarily support Tammy Jo. We reduce the support award to \$25 per week.

Harvey asked for a child support award from Marianne for the two children remaining in his custody. Given the discrepancy between the parties' incomes, we decline to make such an award in this appeal. Marianne is now remarried, but her new spouse has no legal obligation to support the children remaining in Harvey's custody. Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974). We must, however, take Marianne's overall financial condition into consideration. Id. Marianne's new husband, however, must support his own children and is not in a financial position to help Harvey.

III. Property Award

We affirm the trial court's refusal to change the property award.

Custody of Tammy Jo to Marianne is affirmed. Child support is reduced to \$25 per week. Parties should share attorney's fees and costs equally.

AFFIRMED AS MODIFIED.