IN THE COURT OF APPEALS OF IOWA

No. 8-044 / 97-0968

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IN RE THE MARRIAGE OF ALICE BLOSS AND ANTHONY R. BLOSS

Upon the Petition of
ALICE BLOSS n/k/a ALICE MORRIS,

Petitioner-Appellant,

And Concerning
ANTHONY R. BLOSS,

Respondent-Appellee.

FILED
MAR 27 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Warren County, William H. Joy, Judge.

Alice Morris appeals from the district court order modifying the decree dissolving her marriage to Anthony Bloss. **AFFIRMED.**

James S. Blackburn of Carney, Williams, Blackburn, Appleby, Brewick & Maharry, P.L.C., Des Moines, for appellant.

John P. Roehrick of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellee.

Heard by Cady, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Alice Morris, formerly Alice Bloss, appeals the trial court's decision to modify the parties' decree of dissolution. She alleges the trial court erred when it: (1) determined a substantial change in circumstances occurred; and (2) required her to pay one-half of the fee for a custody evaluation. We affirm.

The parties divorced in February 1987. They have two minor children, Megan, age thirteen, and Nicholas, age twelve. The decree provided for joint legal custody. The district court awarded Alice primary physical care and awarded Anthony specified visitation. The decree also provided for "such other visitation" to which the parties may agree.

Difficulties with visitation arose almost immediately. Anthony filed a contempt proceeding in October 1987 involving his exercise of summer visitation. The matter was eventually resolved. Alice filed a petition seeking a modification of the decree in February 1989. Specifically, Alice requested the district court prohibit overnight visitations because Anthony failed to properly care for the children and either intentionally or negligently subjected the children to physical harm. The district court denied Alice's requested modification and stated:

> 6. Petitioner also asks the court to restrict respondent's visitation. The reasons appear to be allegations of abuse which are unfounded. One thing is clear to the court. The parties are bitter toward each other, do not communicate at all, and are using the children as tools against each other. This activity is condemned by the court. The evidence in this record does not convince the court that visitation should be restricted in any way.

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> 7. Joint custody requires some communication between the parties as to the children's best interests. The parties are admonished to re-establish communications to allow the children to have a proper parental relationship with both parents.

In September 1990, Anthony filed an application seeking a temporary and permanent restraining order enjoining Alice from enrolling the two children at Park Avenue School under the surname of Morris, which is Alice's new husband's name. The district court found the action of Alice to be "a violation of the spirit of the joint custodial arrangement" and granted the injunction enjoining Alice's actions and directing Alice shall "in the future ensure that the children are addressed, enrolled and referred to by the name of Bloss."

Alice filed an application for modification of child support in July 1996, and Anthony filed a cross-application seeking a modification of primary physical care. The matters proceeded to trial in April 1997. The district court ruled Anthony had met his burden of showing a material and substantial change in circumstances. Anthony was awarded primary physical care of Megan and Nicholas. Each party was ordered to pay one-half of the custody evaluation fee. Alice sought a stay of the transfer of primary physical care which was denied by the supreme court.

I. STANDARD OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4; *Lemmon v. Hendrickson*, 559 N.W.2d 278, 279 (Iowa 1997). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court,

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especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. MODIFICATION OF CUSTODY. The district court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity. *In re Marriage of Courtade*, 560 N.W.2d 36, 37 (Iowa App. 1997). Custody once fixed should be disturbed only for the most cogent reasons. *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 214 (Iowa App. 1994). The burden for a party petitioning for a change in a dissolution is heavy because children deserve the security of knowing where they will grow up, and we recognize the trauma and uncertainty these proceedings cause all children. *Id.* at 213-14. To change custodial provisions of a dissolution decree, the party seeking change must prove by a preponderance of the evidence conditions since the decree was entered have so materially and substantially changed, the children's best interests make it expedient to make the requested change. *In re Marriage of Rierson*, 537 N.W.2d 806, 807 (Iowa App. 1995). The party seeking to take custody from the other must also prove he or she will render superior care. *In re Marriage of Spears*, 529 N.W.2d 299, 301 (Iowa App. 1994).

The district court "shall order the custody award, including liberal visitation rights where appropriate, which will *assure the child the opportunity for the maximum continuing physical and emotional contact with both parents.*" Iowa Code §

598.41(1)(a) (emphasis added). In addition, the court shall consider the denial by one parent of the child's opportunity for this contact, without just cause, a significant factor in determining any custody arrangement. Iowa Code § 598.41(1)(c). Another important factor for the court to consider in determining the best interests of children is "whether each parent can support the other parent's relationship with the child." Iowa Code § 598.41(3)(e). District court judges are familiar with cases where it becomes necessary to "babysit" the parties long after the dissolution has been decreed. This is one of those cases. However, this case is an extreme example of the steps that can be taken in an attempt to alienate the children from one of the parents.

A. Alienation Issue.

(1) Visitation. As stated above, Anthony started to experience problems with visitation in 1987, the year the parties were divorced. This problem dealt with Anthony's attempt to exercise summer visitation under the decree. Alice made a later attempt in 1989 to modify the decree to prohibit overnight visits with the children. The court found this effort to be totally without merit and admonished the parties to communicate with each other in the children's best interest.

The visitation problems did not stop there. Alice has insisted on visitation under the strict letter of the decree, even though the district court had provided for "such other visitation" to which the parties may agree. When Anthony's weekend visitations would precede a Monday holiday visitation, Alice would demand he bring

the children back on Sunday night only to pick them up again early the next day. Alice refused to recognize New Year's Day as a holiday contemplated by the court. Alice refused to allow *any* mid-week visitations despite repeated requests therefor. Alice refused to allow *any* telephone contact between Anthony and the children for a period of at least six and one-half years. She even refused to give him her telephone number.

(2) Pat Morris. Alice married Pat Morris in 1990. They have three children. Shortly after the marriage, Anthony filed an application seeking the temporary and permanent restraining order enjoining Alice from registering the Bloss children at school under the surname of Morris. As stated above, the restraining order was granted in no uncertain terms by the same trial judge who heard the instant modification action. Evidence presented at the modification hearing indicates Alice was going to find the Bloss children "a new daddy." Even after the restraining order was granted, evidence shows Pat Morris took Nicholas to get a haircut in which the initials N and M were engraved onto his head by the barber. The evidence is clear Alice and Pat have completely ignored the restraining order granted in 1990. The children were enrolled in a parochial school in 1996 without consulting Anthony. The children were enrolled under the surname Morris. On the school registration forms, Anthony is not listed as the children's father or even listed as a person to contact in case of an emergency.

The three Morris children have never been told Anthony is the father of the Bloss children. Instead, they were told Anthony is "some man" who picks up the children on occasion to take them camping.

Exhibit A-1 was admitted into the record of the modification hearing. In that exhibit, Pat directs "any contact in the future concerning Nick and Megan will be made with me, Pat Morris, not my wife. Please make note of this, or I will take steps to ensure that my wife will not be harassed." Pat has consistently denied Anthony any contact whatsoever with Alice and with the children outside of visitations.

(3) Craig Rypma's Custody Evaluation and Testimony. Craig Rypma of Counseling and Assessment Services, P.C., was retained to do a child custody evaluation in this case. The stated purpose of the evaluation was to determine which "parent possesses relative strengths that may contribute most positively to the post-separation adjustment of the minor children and [whether] these strengths justify a modification in the custodial arrangement given the potential for serious consequences imposed on children by requiring them to adjust, once again, to a new arrangement." The evaluation consisted of the results of interviews, direct observations, and psychological test data.

Rypma concluded in his evaluation the Morris family was engaged in "harmful interactions with these minor children in an effort to alienate them from their father." He mentioned many of the things already discussed in this decision. In addition, he pointed to the eight allegations of child abuse made by Alice and Pat against Anthony,

all of which came back as unfounded. Indeed, the only founded report of child abuse was against Pat for having bruised Nicholas in a spanking after he wet his pants. Rypma specifically found the children were "set-up" in advance for visits and quizzed extensively following each visit. Rypma was specifically told by Nicholas that Pat told him what he should say during the interview process. The recommendation in the evaluation was as follows:

> [T]hat physical care be transferred to Anthony Bloss. This recommendation is based on the danger these children currently face in continuing to live in an environment that so blatantly attempts to sabotage their relationship with their biological father. It is the opinion of this evaluator that the biological father is psychologically stable and committed to maintaining a positive relationship between his children and their mother, as well as their step-siblings in the Morris household. Support of parental relationships is an extremely important issue to consider in the long-term adjustment of children post-divorce.
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> One difficulty with this recommendation is the adjustment challenges these children will face with the transfer of custody. This office is acutely aware of the attachments children form with step-siblings and the guilt these children are likely to feel should the court modify custody at this point in their lives. Nevertheless, *the extent of alienation is severe in this case and these children are being subjected to an environment that will ultimately have a negative impact on their adult adjustment.* (Emphasis added.)

Rypma was even more forceful in his testimony. He found Alice's contention Anthony was a controlling, impulsive, and angry individual to be completely without merit. Indeed, Rypma concluded the Morrises were the controlling, impulsive, and angry parties. The following quotes summarize his testimony at trial with regard to his conclusions:

> Well, actually it was pretty sad. . . . I believe that I have seen only one other time in my experience, children as emotionally troubled by the divorce of their parents as were the Bloss children. It was truly a remarkable experience to spend time with those two youngsters and see the stress and emotional difficulty they were having in dealing with the problems that existed between their mother and father. . . . But, as the procedure evolved, it became . . . plainly apparent, at one point Nicholas, the youngest, told me that Mr. Morris had told him before he came in to talk with me . . . what he was supposed to tell me. And, you know, this was a blatant example of an effort on Mr. Morris's part to brainwash the children.
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> . . .
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> I am very worried about these children and their emotional stability. I believe they are being raised in a household which promotes deceit and dishonesty. I believe that their relationship with their step-siblings have been impaired by the actions of Pat and Alice. I believe that there are some pretty serious psychological issues going on with Pat Morris and Alice Morris that would create a situation where their own need to avoid contact with Tony Bloss would outweigh the needs of these children to have an ongoing relationship, not only with Mr. Bloss, but Mr. Bloss's extended family.
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> But with this severe of alienation, everything I know about child development leads me to recommend to this court that a *swift modification* occur in physical custody to allow these children to have a healthy, normal relationship with their father. (Emphasis added.)

B. Concerns About Anthony. Alice claims Anthony has several problems that make it impossible to be a good parent to Megan and Nicholas. Among her allegations are:

1. During the modification proceedings, Anthony was arrested on a domestic abuse charge brought by his then-girlfriend, Michelle Davis. A restraining order was issued prohibiting contact between Anthony and Michelle. This matter had not proceeded to trial at the time of the modification hearing. However, Anthony

admitted that a candlestick was thrown. While this is serious, there is no other evidence of a history of domestic abuse on the part of Anthony that would bring the provisions of Iowa Code § 598.41 into play.

2. In 1995, Anthony was convicted of OWI and had his driver's license suspended. Still, Anthony continued to drive. Anthony testified he thought he was entitled to continue driving to pick up the children for family matters under the provisions of his work permit.

3. Anthony has failed to take part in the children's school activities or to take an interest in their grades. There is evidence of this in the record, but much of his failure was brought about by the actions of Alice and Pat.

4. Anthony has not had a stable independent living arrangement since the divorce. At the time of the modification hearing, Anthony was living in a 2-bedroom apartment. He had plans to build a home shortly after the hearing.

5. Anthony is not financially stable. It is true Anthony filed bankruptcy in 1995. However, this was a Chapter 13 bankruptcy and the evidence shows Anthony has paid all creditors pursuant to the court-ordered plan.

C. Summary. The trial court judge, who was familiar with the parties, heard all of the evidence in this case. He agreed with the conclusions of Craig Rypma concerning the serious and aggravated attempts at alienation by Alice and Pat. He also agreed with Rypma that any concerns about Anthony were far outweighed by the

behavior of the Morrises. The trial court found both parents could adequately meet the material and physical needs of the children. But, the trial court found Anthony was better able to meet the emotional needs of the children and to support a relationship between the children and their mother. The trial court found primary physical care of Megan and Nicholas should be modified based upon all the evidence presented in the case. We agree. Although certainly not dispositive of any issue in this matter, we note to rule otherwise would involve another transfer for these children.

III. DR. RYPMA'S FEE. Alice argues she should not be forced to pay for the study because it was flawed and was incomplete. Anthony argues Alice has waived this issue. We find this claim is without merit and affirm the decision of the trial court.

For the reasons stated, we affirm the decision of the trial court in its entirety.

AFFIRMED.