FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LORI J. BOCK AND DOUGLAS C. BOCK

Upon the Petition of

LORI J. BOCK, a/k/a **LORI J. BURMEISTER,**

Petitioner-Appellee,

And Concerning

DOUGLAS C. BOCK,

Respondent-Appellant.

Filed August 29, 1985

5-250
84-1865

Appeal from the Iowa District Court for Jackson County - L. D. Carstensen, Judge

Respondent husband appeals from trial court's dismissal of his petition to modify the divorce decree and transfer physical custody of the couple's son to him AFFIRMED.

Bradley Norton of Norton & Freese, Lowden, for respondent-appellant.

Thomas F. Breuch, Maquoketa, for petitioner-appellee.

Considered by Donielson, P.J. and Snell and Hayden, JJ.

PER CURIAM

The parties were married in 1973 and are the parents of one child, a boy named Tony, who was born in 1976. The parties' marriage was dissolved in 1979; the dissolution decree placed Tony in Lori's custody.

In 1984 Doug filed the present petition asking that the 1979 dissolution decree be modified to transfer Tony's custody to him. He asserted that since the dissolution of Lori's second marriage in January 1984, Lori has neglected Tony and has become involved with drugs and sexual promiscuity. He asserted that Tony is developing academic and behavioral problems as a result of Lori's neglect.

At the close of Doug's evidence, the trial court granted Lori's motion to dismiss the modification proceeding. The court found that either parent could provide a suitable home and that Doug had failed to prove changes of circumstances requiring a transfer of custody. The court labelled Doug's allegations of drug abuse by Lori as innuendo, and the court found that Lori's sexual conduct had not been shown to affect the child and was not greatly different from sexual conduct practiced by Doug. The court noted with concern that during visitation Doug had disregarded Tony's safety by permitting Tony to ride a motorcycle without a helmet.

Doug has appealed from the trial court's ruling. He contends the trial court erred by concluding that he had not proved changes of circumstances requiring a transfer of custody. He also contends the trial court erred procedurally by granting Lori's motion to dismiss at the close of Doug's evidence, rather than hearing Lori's evidence as well. Finally, he contends the trial judge engaged in judicial misconduct by badgering witnesses, by making sarcastic comments, and by acting on the basis of demonstrated prejudice against Doug.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially with regard to credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Before a modification of child custody is granted, the petitioner must establish a substantial change in circumstances. Iowa Code section 598.21(8). After reviewing the record, we find that there was not a showing of substantial change in circumstances to justify a transfer of custody. Both parents are capable of providing a suitable home for the boy. Doug's allegations of sexual promiscuity and drug use are not supported by the record. Each parent has had companions who have spent the evening at their respective homes when the son was present. There is no indication that the son was adversely affected by this. The record indicates that the son is happy when living with either parent and that each parent provides love and attention. The parties have agreed that a tutor will be hired to help remedy the boy's academic problems. In total, the record does not support petitioner's claim that there has been a substantial change in circumstances.

Petitioner also claims that the judge made sarcastic remarks, badgered the witnesses, and demonstrated a prejudice against the petitioner. It appears that the judge was attempting to get a better understanding of the facts in order to aid him in reaching a decision. Accordingly, we cannot say that they constituted judicial misconduct.

The findings of the trial court are affirmed.

AFFIRMED.