FILED
AUG 25 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CYNTHIA JOANN HARLAN AND ROBERT LEE HARLAN

Upon the Petition of	)	
CYNTHIA JOANN HARLAN,	)	Filed August 25, 1981
Petitioner-Appellee,	)	
And Concerning	)	
ROBERT LEE HARLAN,	)	1-253 / 65723
Respondent-Appellant.	)	

Appeal from Polk District Court - Rodney Ryan, Judge.

Respondent appeals from trial court order granting petitioner's application to transfer custody of couple's older son from respondent to her and denying his application to transfer custody of the couple's younger son from petitioner to him. AFFIRMED IN PART; REVERSED IN PART.

John P. Hearn, Des Moines, Iowa, and Larry Krpan, Des Moines, Iowa, for respondent-appellant.

Kenneth R. Slack, Des Moines, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent appeals from trial court order granting petitioner's application to transfer custody of couple's older son from respondent to her, and denying his application to transfer custody of the couple's younger son from petitioner to him. We affirm in part and reverse in part.

Cynthia and Robert Harlan, Jr., were married September 26, 1970, and are the parents of two minor sons, Robert Lee Harlan III (Bobby), and Brian Eugene Michael Harlan. A dissolution decree was granted December 26, 1978, and by its terms Cynthia was given custody of both boys. Within a month, Cynthia voluntarily turned the care and custody of Bobby over to Robert and, after some additional property settlements, had the dissolution decree modified to legally reflect that change on July 3, 1979. Child support was also adjusted, and reasonable visitation rights were reserved for Cynthia.

Both parties subsequently remarried, relations between the two ex-spouses appeared to remain somewhat strained, and neither parent visited a great deal with the noncustodial child. On June 6, 1980, Cynthia filed an application to modify the modification order, seeking to have custody of Bobby returned to her since she and her new husband were moving to Texas and she believed it would be in the best interests of the two boys to be raised together. Robert then filed a similar application asking that Brian's custody be given to him. Hearing on the matter was held September 23, 1980, and the trial court granted Cynthia's application. A motion for a new trial by Robert was denied October 3, 1980, but by that same order Bobby was permitted to remain with Robert until the end of the semester, January 11, 1981. By order of the Supreme Court, the trial court's order was stayed January 9, 1981, pending the outcome of this appeal.

We note initially that our first and governing consideration in determining the custody of the children is their best interests. Iowa R. App. P. 14(f)(15). To reach this determination, it is our duty to examine the entire record **de novo** and, while we accord weight to the trial court's findings of fact because it heard and observed the witnesses, we are not bound by them. In re Marriage of Burham, 283 N.W.2d 269, 274-75 (Iowa 1979); In re Marriage of Snyder, 241 N.W.2d 733 (Iowa 1976). Another principle that guides our determination, and one that seems to have been a crucial factor in the trial court's decision, is that siblings should not be separated from one another without good and compelling reasons. In re Marriage of Wahl, 246 N.W.2d 268, 270 (Iowa 1976); In re Marriage of Woodward, 228 N.W.2d 74, 75-76 (Iowa 1975). Nor should custody modification be justified absent material and substantial changes in circumstances of a

more or less permanent nature. Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). The party seeking a change in custody must demonstrate an ability to minister not equally but more effectively to a child's well-being. In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977); In re Marriage of Gutermuth, 246 N.W.2d 272, 274 (Iowa 1976).

Applying these principles we find that neither parent has offered sufficient proof rising to the level of substantial and material changes in circumstances that would warrant a change in the current custody arrangements. Although both have remarried and Cynthia plans to move to Texas, none of these events were not within the contemplation of the court and of the parties when custody of each boy was decided as of July 3, 1979. We strongly recognize the settled principle that once custody is fixed it should seldom be disturbed, and then only for the most cogent reasons. Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975). Ideally, we would like not to have the brothers growing up separated, but the facts before us do not support giving custody of both boys to Cynthia solely for the purpose of raising them in one home. Brian has lived away from his father, Robert, since he was just over a year old, and Robert concedes that he and Brian do not know each other very well. The trial court recognized that moving Brian to his father's could have a damaging effect on him. Bobby, on the other hand, has not seen a lot of Cynthia, but the record is filled with evidence of the warm and loving relationship he has with his father and step-mother, and there is some testimony that Bobby does not like his step-father. In addition, Bobby is doing well in school and enjoys a variety of friends, relatives, and activities in his present home, all of which would be severely disrupted were he to be moved to Texas, as noted by the guardian ad litem's report to the court. We therefore affirm that part of the trial court's order which leaves the custody of Brian with the petitioner, Cynthia, but we reverse the modification with respect to Bobby and reinstate the previous modification order of July 3, 1979, which gives custody of Bobby to respondent, Robert.

However, we do share the trial court's concern that Brian and Bobby learn to know and love each other as brothers as well as have more opportunity to become closer to the noncustodial parent of each. Therefore, we order that, at the close of each school year, Bobby is to go to Texas at Robert's expense where he will stay until July 15. At that time Bobby and Brian are to return to Iowa at Cynthia's expense where they will stay until one week before school opens, at which time Brian shall be returned to Texas at Robert's expense. In addition, the brothers will spend Christmas vacation together alternating between each parent, with Christmas vacation of 1981 to be spent together

at Cynthia's home. The parent who will not have the children during Christmas vacation will bear the total expense of the trip, and the method of transportation for this and summer visits will be determined by the parent bearing the cost of the trip and in light of the age and responsibility of the boys. Child support for Brian is to be paid by Robert in the amount of $35 per week until Brian is 18, graduates from high school, or marries.

These visits are set as a minimum. Cynthia and Robert are encouraged to see both of their sons as often as possible, and both parents are directed to promote closeness between the brothers as well as between each son and the noncustodial parent. In short, it is time for these ex-spouses to put the best interests of both children to the forefront, and cease to use the responsibility of parenting as a continued battleground for personal differences that no longer have any importance to the new marriage and home each enjoys.

Costs are assessed against each party equally.

AFFIRMED IN PART; REVERSED IN PART.