IN THE COURT OF APPEALS OF IOWA

No. 0-043 / 99-0665
Filed April 12, 2000

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF LORI LYNN DEMMER AND DANIEL LEE DEMMER

Upon the Petition of
LORI LYNN DEMMER,
Petitioner-Appellee,

And Concerning
DANIEL LEE DEMMER,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Daniel Demmer appeals from a court order denying his application to modify his dissolution decree. **AFFIRMED.**

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellant.

Mona Knoll of Nazette, Marner, Wendt, Knoll & Usher, L.L.P., Cedar Rapids, for appellee.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

MAHAN, P.J.

Daniel Demmer appeals from a court order denying his application to modify his dissolution decree. He claims the court erred in (1) failing to abate his child support obligation during his eight weeks of summer visitation, (2) ordering the children to be exchanged for purposes of visitation in Wisconsin, and (3) ordering him to pay half of the children's orthodontic expenses. We affirm the decision of the district court.

Lori and Daniel Demmer were married in May 1983. They have two children: Tara Anne, born January 3, 1986; and Abby Renee, born April 28, 1988. Lori and Daniel were granted a dissolution of marriage in February 1997. The parties were awarded joint legal custody of their children with primary physical care given to Lori subject to Daniel's rights of visitation. At the time of the dissolution, the parties were living within easy driving distance of each other. In the summer of 1997, Lori remarried and moved with the children to Waupaca, Wisconsin, approximately six hours away.

Lori was working full-time at Amana Refrigeration at the time of the dissolution, but was laid off from that job and has not obtained full-time employment since. Daniel is a self-employed furniture maker with an income that has varied between approximately $16,700 and $24,900 in the last seven years. Since 1998, Daniel has also had some additional income from renting out his basement apartment.

Daniel was required to pay $434.76 per month in child support. Since March 1, 1999, Daniel paid a modified amount of $349.60 per month. Lori has

the responsibility of maintaining medical, dental, and vision insurance coverage for the children, and Daniel would pay one-half of any uninsured expenses.

To exchange the children for visitations, the parties were ordered to meet at a Mobil station approximately twelve to fifteen miles north of Mineral Point, Wisconsin. This location appeared to be as close as possible to a halfway point for both parties. It is also a suitable meeting place for the parties to wait with or without the children since it is well lighted and has a restaurant and restrooms.

Daniel filed an application for modification and a trial was held on December 2 and 3, 1998. There were four issues that were not resolved at the trial, three of which are before us.

I. Standard of Review. Our standard of review in equity cases is de novo. Iowa R. of App. P. 4; *Ide v. Farm Bureau Mut.Ins. Co., 545 N.W.2d 853, 856 (Iowa 1996).* In doing so, we examine the entire record and adjudicate anew rights on issues properly before us. *Id.* at 856-57. Though we are not bound by them, weight is given to the district court's factual findings, especially when considering the credibility of witnesses. Iowa R. of App. P. 14(f)(7).

II. Abatement of Child Support. Daniel contends he should be granted an abatement in his child support obligation for the eight weeks in the summer when the children are with him. He claims during these eight weeks his expenses increase while his income decreases because he has less time to devote to his work. Daniel also claims he incurs significant travel costs as a result of the children living in Wisconsin.

Parents have a legal obligation to support their children and this obligation should be apportioned in accordance with the means available. *In re Marriage of Smith*, 501 N.W.2d 558, 560 (Iowa App. 1993). In determining a party's child support obligation, the court must first determine the party's actual and monthly net income for purposes of applying the child support guidelines. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 51 (Iowa 1999). "There is a rebuttable presumption the amount of child support which would result from the application of the guidelines is the correct amount of child support to be awarded." *Id.* at 52-53. The court shall not vary from the amount of child support that is determined from applying the guidelines unless such application of the guidelines is found to be unjust or inappropriate. *Id.* at 53.

The child support guidelines incorporate the reasonable living expenses of the non-custodial parent since some form of shared physical custody is the norm. It would be counterproductive to use the length of time children spent with one parent versus that of another as a formula to "chip away at the uniformity and fairness sought to be achieved by the guidelines." *In re Marriage of Fox*, 559 N.W.2d 26, 29 (Iowa 1997). The court in the *Fox* case would not depart from the child support guidelines because one parent had the children for approximately one-third of the time and the other for two-thirds.

We agree with the district court the record does not show a departure from the guidelines is justified or appropriate. Daniel has already obtained a reduction in his child support obligation from $434.76 per month to $349.60 per month

based on calculations of his income and Lori's income from child support worksheets.

III. **Location to Exchange Children for Visitations.** Daniel contends the Mobil station north of Mineral Point, Wisconsin is not an equitable place for the parties to exchange the children for visitations. He believes because Lori was the one to move, she should bear a greater share of the transportation responsibilities. Daniel asks the meeting place be in Dubuque which is under two hours from his residence and over four hours from Lori's. The record shows, and Daniel concedes, Lori's move to Wisconsin was for legitimate reasons and not for the purpose of making Daniel's visitation rights more difficult. We see no reason for Lori to have to bear a greater transportation burden.

We agree with the district court's finding the Mobil station is the place for the parties to meet for purposes of exchanging the children for visitations. This location is approximately halfway from both parties' homes and is a suitable place for the parties to wait.

IV. **Orthodontic Braces.** Daniel concedes Iowa courts have historically split medical expenses on a fifty/fifty basis between the parents. However, Daniel claims he should not be responsible for half the cost of orthodontic braces for the children because he was neither consulted before authorization of such treatment nor was it made clear to him whether braces constitute necessary medical and dental care. He feels since Lori made this decision unilaterally, she should have to bear the full expense. We disagree and find the record indicates otherwise. Lori maintains medical insurance for the children and has had

difficulty obtaining reimbursement from Daniel for any expenses not covered by insurance. Daniel shall pay for one-half of any costs for braces for the children that is not covered by insurance.

V. Attorney Fees. Lori requests appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 854 (Iowa App. 1998) (citing *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987)). The court should make an attorney fee award which is fair and reasonable in light of the parties' financial positions. *Id.* In deciding whether to award attorney fees on appeal, the court considers "the needs of the party making the request, the ability of the other party to pay and whether the party making the request was obligated to defend the trial court's decision on appeal." *Id.* (citing *In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa App.1994)). We decline Lori's request for attorney fees. Each party shall be responsible for his or her own attorney fees.

AFFIRMED.