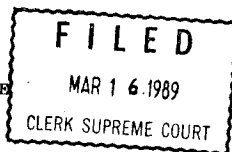


IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LaRAE KAY MATHRE
AND ERIC CARL MATHRE



Upon the Petition of	)	
LaRAE KAY MATHRE,	)	
	)	
Petitioner-Appellant,	)	
	)	
and Concerning	)	8-526
ERIC CARL MATHRE,	)	88-598
	)	
Respondent-Appellee.	)	

131

Appeal from the Iowa District Court for Story County
(No. D-4267), Carl E. Peterson, Judge.

Petitioner's former wife appeals the district court's denial of her application for modification of the joint custody provision of the decree dissolving the parties' marriage. **AFFIRMED.**

John L. McKinney, Ames, for appellant.

Greg W. Steensland, Ames, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

OXBERGER, C.J.

The marriage of petitioner, LaRae Kay Mathre, and respondent, Eric Carl Mathre, was dissolved in January 1987. The dissolution decree set up a joint custody arrangement with Eric having physical care of the parties' one child, Ryan, born in November 1983. In August 1987 LaRae filed an application for modification of the decree. She asked that physical care of Ryan be transferred to her. The trial court denied LaRae's application for modification. We affirm the trial court's decree.

In this modification proceeding, we review the record de novo. In re Marriage of Hubbard, 315 N.W.2d 75, 80 (Iowa 1982); Iowa R. App. P. 4. Because the trial court was present to listen and observe the witnesses, we give weight to its findings. In re Marriage of Behn, 385 N.W.2d 540, 541 (Iowa 1986). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties in this case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). Our paramount consideration in determining custody is the best interests of the child.

The standards we apply in a modification proceeding are well established:

The applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the child's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was

entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Zabecki, 389 N.W.2d 396, 398 (Iowa 1986) (citing In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983); In re Marriage of Bolin, 336 N.W.2d 441, 443 (Iowa 1983)). LaRae contends there has been a substantial change of circumstances to support a transfer of physical custody of Ryan from Eric to LaRae.

The Decree of Dissolution ordered joint custody with primary physical care to Eric. The trial court in the original proceeding said "The respondent is the more stable individual. His maturity, expressiveness, disposition, affection, common sense, kindness and a sense of value leads the court to the conclusion that Ryan's best interests lie with his father having his physical care." The court found LaRae to be on ADC, live with her boyfriend and have had some problems with the law in the form of a deferred sentence on an OWI charge and a conviction of a simple misdemeanor involving bad checks.

LaRae has expressed some concern with Eric's lack of attention to Ryan's health. She feels the child is often sick and not always properly dressed. The record does reflect LaRae is more diligent about seeking medical

attention for Ryan and that Eric has, on occasion, misled LaRae concerning medical attention of Ryan. However, we are not convinced Ryan is being neglected when it comes to medical attention.

LaRae also contends Eric lacks a sense of fiscal responsibility. There is evidence Eric has a problem handling his debts. He has also demonstrated a lack of responsibility through an incident where he abandoned his car on a street where it received numerous traffic tickets and was finally towed. While Eric may not have changed from a responsible to irresponsible person since the time of the decree, his behavior certainly has deteriorated from the person the trial judge described in the original action. Further, Eric has been involved in two incidents involving excessive use of alcohol. He pleaded guilty to a charge of public intoxication and to a separate incident which resulted in a charge of operating a motor vehicle while intoxicated. Eric's irresponsibility is further proven by his failure to respond to payment of fines and community service obligations assessed against him in the OWI proceedings. There was also evidence that Eric may currently have a substance abuse problem.

LaRae also asserted Eric was the cause of complaints about noise at his apartment complex. Eric currently lives with his twenty-year-old girlfriend. His girlfriend has a history of drinking and drug problems; however, there is no

indication that presently she has a drug or alcohol problem. He did not have such a living arrangement at the time of the dissolution.

LaRae, at the time of the dissolution, was living in Boone with her boyfriend. She was on ADC and attending DMACC in secretarial training. She and her boyfriend married in June 1987 and now reside in Osceola in a two-bedroom house. LaRae's husband has a good relationship with Ryan. LaRae has a full-time job at Boyd Manufacturing earning \$3.80 per hour. She appears to have a very stable home environment. The record does not reveal an ongoing problem with alcohol. She has arrangements for child care and preschool should physical care of Ryan be transferred to her.

The trial court found Eric's not functioning responsibly was a temporary situation and resolved the modification question to whether Eric's girlfriend presents a substantial change in circumstances. A parent's moral misconduct alone is not sufficient to justify modification of custody determinations. See In re Marriage of Mikelson, 299 N.W.2d 670, 673 (Iowa 1980). We find there has not been a material and substantial change of circumstances not in contemplation by the trial court at the time the original decree was entered and therefore affirm the decree to award physical custody of Ryan to Eric.

Each party is to pay his or her own costs on appeal.

AFFIRMED.