IN THE COURT OF APPEALS OF IOWA

FILED
MAR 27 1996
CLERK SUPREME COURT

No. 6-036 / 95-0790

IN RE THE MARRIAGE OF NANCY PARLEE AND MARK ANDREW PARLEE

Upon the Petition of
MARK ANDREW PARLEE,

0000097

Appellant,

And Concerning
NANCY PARLEE n/k/a **NANCY SIMPSON,**

Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Mark Parlee appeals the district court's decision denying his petition to modify the custody provisions of the parties' dissolution decree. **AFFIRMED.**

Douglas R. Smalley of Riemenschneider, Rydell & Smalley, Des Moines, for appellant.

Robert H. Laden of Hyland, Laden & Pearson, P.C., Des Moines, and Teresa A. Beyer, West Des Moines, for appellee.

Kathryn Miller, Youth Law Center, Des Moines, for minor children.

Considered by Sackett, P.J., Cady, J., and Peterson, S.J.*

*Senior Judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

PETERSON, S.J.

This is an appeal from an action to modify custody. Our review of this matter is de novo. *In re Anderson*, 530 N.W.2d 741, 741 (Iowa App. 1995). We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties before us. *Anderson*, 530 N.W.2d at 741. Upon our de novo review of the record, we affirm.

I. CUSTODY.

The marriage of Nancy Simpson and Mark Parlee was dissolved on July 7, 1987. The parties have two children, Ryan born May 16, 1980, and Stacie born April 28, 1981. The dissolution decree placed the primary physical care of the children with Nancy.

Mark filed a petition for modification of custody on April 12 , 1994. Trial was held on the petition, and both children testified they wanted a change in custody so they could reside with their father. The district court found Mark had failed to prove a material and substantial change in circumstances not contemplated at the time of entry of the dissolution decree.

In reviewing a modification action, the governing legal principles are well established.

> To change a custodial provision of a dissolution decree, 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 children'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 for only the most cogent reasons.

Anderson, 530 N.W.2d at 741-42.

Even though we exercise de novo review, we are cognizant of the superior vantage point of the trial court and its ability to consider the demeanor and appearance of the parties. *See In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). In this case we are particularly influenced by two factual findings of the trial court. First, the court found Mark had "attempted to manipulate the minor children to his own best interest." The trial record clearly supports this finding. Mark undermined his children's relationship with their mother. From the outset he involved the children in the modification proceedings. He unnecessarily made them privy to his discovery responses which included information potentially prejudicial to their mother. Mark knew the children were seeing a clinical social worker and he allowed them to review the social worker's deposition. This conduct destroyed the children's trust in the social worker and effectively sabotaged any further therapeutic relationship.

The trial court also found "[t]he problems experienced by the children in their relationship with their mother are normal teenage problems that are experienced by many families." The disputes the children had with their mother are typical of those between adolescents and custodial parents. Mark's manipulation may have exacerbated the disputes, but nothing in the record suggests the existence of any changes which would make it in the best interests of Ryan and Stacie to modify custody.

The children attend their father's church and share his religious beliefs. This factor, alone, does not warrant a change in custody. Nancy does not prohibit the children from exercising their religious preferences, she only asks they be tolerant of beliefs and practices different from their own. We do not favor one religion over another in custody disputes. *See In re Marriage of Rodgers*, 470 N.W.2d 43, 45 (Iowa App. 1991).

While a child's custodial preference is, in some cases, a proper factor to be considered in a custody determination, it is entitled to less weight in a modification action than would be given in an original custody proceeding. *In re Marriage of Hunt*, 476 N.W.2d 99, 101 (Iowa App. 1991). We give even less weight to the children's preferences in a case such as this where they are the result of parental manipulation. Upon our de novo review, we find Mark has failed to prove a material and substantial change in circumstances warranting a change in custody.

II. APPELLATE ATTORNEY FEES.

Nancy requests an award of 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 Scheppele*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate attorney fees, we consider the parties' financial positions and whether the party making the request was obligated to defend the trial court's decision on appeal. *Id.* Given that Nancy was obligated to defend this case on appeal and remains the prevailing party, we order Mark to pay $500 of Nancy's appellate attorney fees.

AFFIRMED.