FILED
AUG 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF STEPHANIE ADA SWALLOW AND JOHN DOUGLAS SWALLOW

UPON THE PETITION OF STEPHANIE ADA SWALLOW,	)	
	)	Filed August 30, 1983
Petitioner-Appellee,	)	3-106
AND CONCERNING JOHN DOUGLAS SWALLOW,	)	3-69039
Respondent-Appellant.	)	

Appeal from Dallas District Court, Ray Hanrahan, Judge.

Respondent-husband appeals from a modification of the visitation provision of the decree dissolving the parties' marriage. AFFIRMED.

William F. Denman and G. Gregory Kelly, Des Moines, for respondent-appellant.

Joseph G. Bertogli of Flagg, Hockett, Benhart & Golden, Des Moines, for petitioner-appellee.

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

OXBERGER, C.J.

Respondent-husband appeals from a modification of the visitation provision of the decree dissolving the parties' six-year marriage. The trial court found that John had not shown that he could more effectively minister to the children's needs, and it thus refused to modify the custody award. The trial court found that Stephanie had shown a change of circumstances which would justify reducing John's visitation, and it reduced the visitation to one weekend a month, three weeks in the summer, and five days at Christmas. The trial court taxed all costs of the proceeding to John. John appealed. On appeal, respondent-husband asserts (1) that petitioner-wife failed to show a material and substantial change of circumstances which would justify reducing respondent-husband's visitation; (2) that respondent-husband showed he could more effectively minister to the needs of the parties' children, and the trial court should thus have modified the decree by awarding custody to him; and (3) that the trial court should not have required respondent-husband to pay all the costs of modification proceeding. We affirm.

I. Scope of Review

Review of appeals of this type is well established. It is de novo. Iowa R. App. P. 4. Weight is to be given to the findings of the trial court, but we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Modification of Visitation

We affirm the modification order of the trial court restricting visitation. The general rule is that, in order to justify visitation modification, there must be a change of circumstances since the divorce decree. Such change can be much less extensive than that which allows child custody modification. Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973); In re Marriage of Lower, 269 N.W.2d 822, 827 (Iowa 1978). Stephanie had the burden to establish by a preponderance of

the evidence that the change in circumstances warranted the modification sought. It is clear from the record that since Stephanie moved to Minnesota, John has continued to have the children with him on his farm in Iowa every other weekend. It is a five-hour drive one-way between the two locations, and each parent makes the round trip once on that weekend. In Lower, 269 N.W.2d at 827, the petitioner asked the court to revise the respondent's visitation rights in light of a move to Minnesota. The court found that the move constituted adequate ground for the modification because trips from Minnesota to Iowa every other weekend may prove to be unnecessarily disruptive to the child. If the situation remained as it is, the children would be spending ten hours in the car every other weekend. The record indicates that even though the children are "good travelers," the ride "cuts into their bedtime." It also indicates that with the children getting older, they need more time to develop their friendships at their new home. This would be difficult for them to do if they are gone every other weekend. Both parents realize that the initial visitation provision has grown inadequate. The fact that Stephanie and John could agree to a possible alternative visitation provision that is more appropriate under the present circumstances, leads us to believe that the modification ordered by the trial court on this issue is a proper one. We therefore affirm that Stephanie has met her burden regarding the visitation of the children and the decree should be modified as set out by the district court.

II. Child Custody

John claims that the move from Iowa to Minnesota has been detrimental to the children and that he should have custody of the children because he can minister more effectively to them. The well-established rules relating to modification of child custody have been reiterated in In re Marriage of Day, 314 N.W.2d 416, 417 (Iowa 1982). John has to show by a preponderance of the evidence

that conditions following the dissolution decree have so materially and substantially changed that the children's best interests make it expedient to award custody to him. He needs to show a superior claim based on his ability to minister, not equally but more effectively, to the children's well-being. We agree with the trial court that he failed to meet this burden.

It appears from the record that both Stephanie and John are suitable custodial parents. Each has remarried and each seems to have a good home environment. The record shows the conditions under which the children are living now with their mother. The conditions are adequate and the children are well cared for. It is a well-established rule that the status of children should be fixed as soon as possible and thereafter seldom disturbed, and then for only the most cogent reasons. Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975). Stephanie has had custody of the two children since the entry of the decree in 1979. Except for an unpursued application for modification in 1980, Stephanie's parenting abilities were not questioned. The record indicates that the children have adequately adjusted to the new community and to the new family members. John has a well-organized and stable family life, but that in itself is not enough to warrant a change in custody. In re Marriage of Brown, 247 N.W.2d 2, 4 (Iowa 1976). Each party applied the principles of In re Marriage of Winter, 233 N.W.2d 165, 166 (Iowa 1974) as evidence that one party or the other would be the better custodial parent. Notwithstanding the conflicting evidence, we must agree with the trial court that John has failed to show that he can more effectively minister to the needs of the two children. Therefore, we affirm the district court's denial of John's application to modify the decree.

III. Assessment of Costs

This is an equity action and the court's discretionary determination is ordinarily dispositive. McNamara v. McNamara, 181 N.W.2d 206, 211 (Iowa 1970). We find no merit in John's contention that he was compelled to bring this action. Therefore we affirm the taxing of trial costs to John.

AFFIRMED.