

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 22 1984

CLERK SUPREME COURT

IN RE THE MARRIAGE OF NANCY ANN FRITZ AND JOHN AUGUST FRITZ

70

UPON THE PETITION OF
NANCY ANN FRITZ,

)

Filed May 22, 1984

)

Petitioner-Appellee,

)

4-125

AND CONCERNING
JOHN AUGUST FRITZ,

)

83-1421

Respondent-Appellant.

)

Appeal from the Iowa District Court for Dubuque County—L. John Degnan,
Judge.

Respondent-husband appeals from a modification of the decree dissolving
the parties' marriage. REVERSED AND REMANDED.

Joseph J. Bitter, Dubuque, for respondent-appellant.

Paula M. Stenlund, Dubuque, for petitioner-appellee.

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

Respondent-husband appeals from a modification of the decree dissolving the parties' marriage. The decree set up a joint custody arrangement with respondent-husband having physical care of the parties' child. On appeal respondent-husband asserts: (1) that the trial court violated his right to due process when it entered an ex parte order transferring physical care temporarily to petitioner-wife after she filed her application for modification of the decree; and (2) that there has not been a substantial change of circumstances since the decree which warrants transferring physical care permanently to petitioner-wife. We reverse and remand.

L Modification

The principle question for us in our de novo review is whether Nancy established by a preponderance of the evidence that conditions since the dissolution decree was entered have so materially and substantially changed that the child's best interests make it expedient to award Jill's custody to Nancy. See In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980). The changed circumstances must not have been contemplated by the trial court when the decree was entered; they must be more or less permanent or continuous, not temporary, and must relate to the welfare of the child. Id. at 671. This burden stems from the principle that once custody of a child has been fixed it should be disturbed for only the most cogent reasons. Id. at 671.

Our de novo review of the record indicates that Nancy's arguments for modification stem entirely from the allegation that John's move to New York established a material and substantial change of circumstances. Our cases have stated that removal of a child from the state in our highly mobile society and for good economic reasons provides no justification for custodial change. In re Marriage of Day, 314 N.W.2d 416, 420 (Iowa 1982).

At the time of the original divorce proceedings, John admitted that he had told the trial court that he intended to say in Dubuque. However, soon after the decree was entered John took a job in New York. The evidence indicates that the New York job had some economic advantages, i.e., insurance benefits and employer-paid portion of social security taxes. John testified that the new job allows him about the same amount of time as before to spend with Jill and his family. John is gone from the home approximately two nights a week. John's new wife, Susan, is employed full-time and must be out of the home 40 hours a week. John testified Susan planned to leave her job and move to Iowa but a job opportunity opened for him in New York.

Both John and Nancy have provided adequate shelter for Jill; both parents love the child and seem able to properly care of the child. However, we do not find any cogent reason to change custody. The original trial court found John to be the more stable parent. Circumstances have not changed to indicate that John is any less stable now. John's move to New York is not sufficient reason, alone, under Marriage of Day, supra, to change custody.

The matter of Nancy's visitation with Jill was not addressed during the modification hearing so we remand this issue to the trial court unless the parties are satisfied with the original provision.

John claims the temporary ex parte order denied him due process. Since we have granted him custody of Jill we find the issue to be moot. However, we do not mean to leave the impression we condone the procedure used in this case.

REVERSED AND REMANDED.