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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SALLY E. LEAF AND JIMMY D. LEAF

Upon the Petition of)
SALLY E. LEAF,) Filed November 29, 1982
Petitioner-Cross-Appellant,)
And Concerning)
JIMMY D. LEAF,) 2-256
2-67089
Respondent-Appellant.)

Appeal from Polk District Court - Dale S. Missildine, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the order modifying the parties' dissolution decree. AFFIRMED.

Ted E. Marks of Marks, Marks & Marks, Des Moines, for respondent-appellant.

George S. Eichorn of Comito & Capps, Des Moines, for petitioner-cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, and Johnson, JJ.

Respondent-husband appeals and petitioner-wife cross-appeals from the order modifying the parties' dissolution decree. On appeal the respondent-husband asserts that no substantial and material change of circumstances was shown to justify an increase in child support and that the visitation provision was inadequate. Petitioner-wife asserts that the court granted excessive visitation and that certain evidence should have been admitted concerning the husband's past attempts to exercise visitation. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. It is our responsibility to review the facts as well as the law to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give great weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

I.

The parties' 1975 dissolution decree awarded the wife, Sally Leaf, custody of the parties' two children, now aged nine and eleven, and child support of $15 per week per child. The husband, Jimmy Leaf, was granted reasonable visitation so as not to interfere with the children's general health, education, and welfare. In 1975 Jim was unemployed and was receiving benefits of $107 per week. He subsequently obtained a low-paying job, discharged certain debts in bankruptcy, completed a period of military service, and was remarried to a woman who had two children and an income of $120 per week. At the time of the modification hearing, Jim had obtained an engineer's license but was still unemployed and drawing benefits of $143 per week. Certain evidence that Sally sought to present concerning Jim's attempt to exercise past visitation was excluded as irrelevant,

immaterial, and/or cumulative. When she sought to call her mother as a witness the trial court questioned whether the testimony would be cumulative and another witness was called instead. No offer of proof was made as to what her mother's testimony would be. The trial court modified the decree, increasing the amount of support to $40 per week per child. It also provided for Jim to have visitation on alternate weekends, alternate major holidays, and two weeks during the summers, provided that respondent give petitioner four weeks' notice of his intent to exercise his right of visitation.

II.

Jim asserts that there was not shown a material and substantial change in circumstances to justify a modification of the support provisions of the original decree. The burden is on Sally to show that there has been a material change of circumstances by a preponderance of the evidence. Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). The material change in the circumstances should be more or less permanent or continuous, not temporary, and where a change of the financial condition of one or both of the parties is relied upon, it must be substantial. McDonald v. McDonald, 183 N.W.2d 186, 188 (Iowa 1971). Remarriage of a parent alone will not justify modification since it is held to be within the contemplation of the court at the time of the original decree. In re Marriage of Mears, 213 N.W.2d 511, 516 (Iowa 1973). The court may, however, take note of such fact when considering the overall change in the financial position of the obligated parent. See Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973); Page v. Page, 219 N.W.2d 556, 558 (Iowa 1974).

Since the dissolution decree was entered Jim has remarried a woman who has two children from her previous marriage and who earns $120 per week. He obtained an engineer's license which provides him with the opportunity for gainful employment. At the time of the modification hearing, however, Jim was unem-

ployed and drawing benefits of $143 per week. Sally's income has remained fairly constant. We believe that the circumstances justify an increase in the child support from $15 to $40. Jim is receiving more in benefits than he was at the time of the decree, he is married to a woman with a substantial income of her own, and has a newly acquired engineer's license which provides him better employment opportunities. We therefore affirm the child support increase as modified.

III.

Jim also contends that the visitation was inadequate and not in the best interest of the children. Sally cross-appeals, asserting that the visitation granted was excessive. We believe these contentions are without merit and affirm the visitation provision as modified.

In the original decree the court awarded custody to Sally "subject to such reasonable rights of visitation in the respondent as to not interfere with the general health, education and welfare of the children." The record demonstrates that, beginning in 1976, Jim experienced difficulties attempting to exercise his visitation rights. Sally occasionally refused to allow Jim to see the children altogether. He often became argumentative and hostile when she kept the children from him. On the other hand, there is also evidence that occasionally Jim had been drinking when he fought to see the children. When he went into military service he tried to maintain communications with his children; he wrote them often and remembered their birthdays with gifts of money. When he returned from the service he still had trouble trying to see the children, although he made many attempts to do so.

The record suggests that Sally did not comply with her obligations under the original decree; her custody award was subject to reasonable rights of visitation. She obviously hindered Jim's attempts to exercise those rights. We believe that Jim is stable and that it would be in the best interests of the children to maintain

a continued association with their father. See In re Marriage of Lowen, 269 N.W.2d 822, 827 (Iowa 1978); In re Marriage of Morton, 244 N.W.2d 819, 822 (Iowa 1976). We thus believe that the visitation schedule set by the court is appropriate. Sally's argument that the amount of visitation is excessive is unfounded. Both parties would like more time with their children. Under the modification award, each will spend every other weekend and every other holiday with the children. We believe this is an equitable way to balance the desire of each parent to spend as much time as they can with their children. We encourage them to work together to implement the court's ruling amicably.

We note that Sally has no ground to challenge that the court erred in not allowing her mother to testify as to Jim's past attempts to exercise visitation. The court excluded the testimony as irrelevant, immaterial, and/or cumulative. In any event, Sally failed to make an offer of proof as to this testimony and, therefore, has failed to preserve error on this issue. See Herbert v. Allen, 241 Iowa 684, 690, 41 N.W.2d 240, 243 (1950).

The court's modification ruling is, therefore, affirmed.

AFFIRMED.