

IN THE COURT OF APPEALS OF IOWA

No. 0-680 / 10-0143
Filed November 24, 2010

**IN RE THE MARRIAGE OF MARY
ANNE BLONDINO AND STEVEN
LOYD BLONDINO**

**Upon the Petition of
Mary Anne Blondino,**
Petitioner-Appellee,

**And Concerning
Steven Loyd Blondino,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

A father appeals from the district court's order denying his application to modify the child custody provisions of a dissolution decree. **REVERSED AND REMANDED.**

Carmen E. Eichmann, Des Moines, for appellant.

Deborah M. Tharnish of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, and Leslie Babich, Des Moines, for appellee.

Heard by Vogel, P.J., and Vaitheswaran, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

Vogel, P.J.

Steven Blondino appeals from the district court's order denying his request to modify the child custody provisions of his and Mary Anne Blondino's dissolution decree. He asserts that the district court should have granted him physical care of the parties' three children.

I. Background Facts and Proceedings

Steven and Mary Anne's marriage was dissolved in July 2005. They have three children: Jonah (born in 1998), Cole (born in 2000), and Sophia (born in 2002). Pursuant to the dissolution decree, the parties were granted joint legal custody of the children, with Mary Anne having physical care and Steven visitation.

In October 2008, Steven sought to modify physical care of the children, asserting there had been a substantial and permanent change of circumstances. A five-day trial was held in September 2009. In addition to the parties, numerous witnesses testified, including Steven's mother, brother, and neighbor; Mary Anne's mother, and adult son from her prior marriage; two private investigators hired by Steven to surveil Mary Anne; an employee of Mid-Iowa Family Therapy Clinic who had worked with Mary Anne and the children through a program called Community Care, sponsored by the Iowa Department of Human Services; and a licensed psychologist, Dr. Shelia Pottebaum, who had met with the children several times from October 2008 to September 2009.

On October 15, 2009, the district court found there were a number of concerns regarding both parents, recognizing that Mary Anne had not provided a stable home for the children and had exposed them to emotionally traumatic

events, and discerning Steven had anger and control issues. Although both parents loved the children and were capable of providing for the children's physical needs, the children's emotional needs were at issue and "notwithstanding which party has primary physical care, the children will continue to be exposed to secrets, drama, and adult issues." The court found that a transfer of physical care would be "another emotionally traumatic event for the children," and denied Steven's request. On October 26, 2009, Steven filed a motion to reopen the record and a motion to enlarge, which the district court denied. Steven appeals.

II. Physical Care

Steven contends that the district court should have modified the child custody provision of the dissolution decree to grant him physical care of the children. We review modification proceedings *de novo*. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006). However, we recognize that the district court was able to listen to and observe the parties and witnesses. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). The controlling consideration in child custody cases is always what is in the best interests of the children. *In re Marriage of Thielges*, 623 N.W.2d 232, 235 (Iowa Ct. App. 2000).

A party who seeks a modification of child custody must establish by a preponderance of the evidence that there has been a material and substantial

change in circumstances since the entry of the decree. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983).

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.

Id.

Steven specifically asserts that he proved a material and substantial change in circumstances and that he is the superior parent. Steven does not point to one event in particular, but rather argues that Mary Anne's life has been "spiraling downward" since June 2005, and cites multiple events to demonstrate this destructive pattern. He further argues that he can provide a far more stable home for the children, an area where Mary Anne has failed the children.

Steven's employment and housing has not changed since the dissolution. In June 2007, Steven married Gloria, who has an employment history of working with children. *See In re Marriage of Downing*, 432 N.W.2d 692, 695 (Iowa Ct. App. 1988) ("We note while remarriage itself does not constitute a substantial change in circumstances, the new relationship can and should be considered by the court."). Steven and Gloria's home is suitable for the children.

Steven regularly exercises visitation with the children, including Tuesdays and Thursdays and every other weekend. He is involved with their school and extracurricular activities.

Mary Anne has not provided the same stable home environment that was contemplated with the original decree. At the time of the dissolution, Mary Anne ran a daycare business out of her home, in addition to caring for the parties' children. In 2007, Mary Anne discontinued the daycare business and her house was foreclosed upon. Since that time, she and the children have moved several times, causing the children to attend schools in three different school districts. In October 2007, Mary Anne admittedly attempted suicide, and the evidence suggests there were two other such attempts. She pleaded guilty to operating while intoxicated in 2009.¹ She has an ignition interlock system in her car, but has tampered with it on several occasions to override its intended purpose. Additionally, Mary Anne has had unhealthy romantic relationships and exposed the children to extremely emotionally traumatic events. Following the dissolution, Mary Anne began dating Mark, who committed suicide in March 2007. In July 2007, Mary Anne began dating Mitch, whom she married in March 2008; Mitch committed suicide in October 2008. The record clearly reveals the resulting emotional damage to the children.

We recognize that Mary Anne has been the primary caregiver for the children before and after the dissolution,² is currently attending school, and has a steady job. We also understand that the district court placed emphasis on the fact that Mary Anne encouraged a relationship between the children and Steven

¹ She was also arrested for operating while intoxicated in 2005, with a blood alcohol content of .167. The charge was eventually dismissed.

² Steven has extensive visitation with the children including: every Tuesday evening; every Thursday evening until Friday morning; alternating weekends from Friday evening until Sunday evening; on weeks the children are not with him for the weekend, they are with him from Tuesday evening until Wednesday morning.

and Steven's parents, who live in Virginia. Noting that, we must also recognize and highlight the instability in Mary Anne's life that has caused the children to suffer the consequences of her actions. She has not put the children's needs first, or given them a positive, constant, and stable home life. While the district court noted a number of concerns regarding Steven's parenting style, it found that the decision was close, and one made "not without reservation."

After careful de novo review of the record, considering Mary Anne's significant struggles since the time of the dissolution decree, in comparison with Steven's stable lifestyle, we find Steven has met his heavy burden of showing a material and substantial change in circumstances that would warrant a modification in the custody provision.³ Further, Steven has demonstrated he can render superior care of the children. Therefore, we reverse and remand to the district court for proceedings to address attendant issues consistent with this opinion. Costs on appeal assessed to Mary Anne.

REVERSED AND REMANDED.

³ Steven raised two additional issues on appeal, but because we are reversing and remanding, we no longer need to address those issues. Additionally, Mary Anne requested appellate attorney fees, but we decline to award them.