IN THE COURT OF APPEALS OF IOWA

No. 6-288 / 05-2046
Filed May 24, 2006

IN RE THE MARRIAGE OF SUZANNE THERESE LANGE AND JAMES WILLIAM LANGE, JR.

Upon the Petition of
SUZANNE THERESE LANGE,
Petitioner-Appellee,

And Concerning
JAMES WILLIAM LANGE, JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

A father appeals the district court decision denying his request to modify the custody provision of the parties' dissolution decree. **AFFIRMED.**

Darin S. Harmon and Phil Parsons of Kintzinger Law Firm, P.L.C., Dubuque, for appellant.

Robert L. Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., for Dubuque, for appellee.

Considered by Hecht, P.J., and Eisenhauer, J. and Schechtman, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SCHECHTMAN, S.J.

This appeal arises from the trial court's denial of the appellant's petition to modify the dissolution decree which granted the physical care of the parties' four children to the appellee/mother, Suzanne Lange. James Lange Jr. sought a modification to award the parties' shared custody, alleging that a change in his employment constituted a substantial change in circumstances.

The modification court found James "failed to meet his burden to show that a substantial and material change in circumstances has occurred requiring that the Court modify the current physical care placement in Suzanne."

Our review of this modification action is de novo. Iowa R. App. P. 6.4. Courts can modify the custodial terms of a dissolution decree only when there has been a substantial change in circumstances since the time of the decree not contemplated by the dissolution court when the decree was entered. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa Ct. App. 1998). The change must be more or less permanent and relate to the welfare of the children. *Id.*

James asserts that the voluntary termination of his position as chief operating officer at Advance Data Communications[1] allows him substantial additional time to spend with the children. James contends that his work hours have been drastically reduced and his long distance travel essentially curtailed. Accordingly, he argues that the additional time has altered the dynamics of his relationship with the children allowing him more flexibility to be increasingly active in their lives.

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[1] His resignation occurred eighteen months after the September 2002 decree.

It is readily apparent that the dissolution court did not find that James's employment was an impediment in denying his original request for shared physical care. It awarded physical care to Suzanne as (1) she was the primary care provider, (2) she was more in tune with the children's needs, and (3) a single home provides more consistency and stability.

A heavy burden is placed upon a party seeking a modification of custody, who must show the suggested change results in superior care. *In re Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa Ct. App. 1998). James has not done so.

The power to grant a modification is not a power to grant a new trial or retry the same issues. *Smith v. Smith*, 254 Iowa 1120, 1122, 120 N.W.2d 448, 449 (1963). As the trial court succinctly stated:

> This truly was not a modification action. It was the dissolution action all over. The were no cogent reasons presented to the court to raise issue with the care of the children and the need to place them in a better home with a better care provider.

James was originally awarded extraordinary visitation. By agreement, it was augmented by another overnight before the present weekend visitation. This arrangement allows James abundant time to responsibly perform his parental role under these custodial circumstances. On our de novo review, it boils down to James's design and desire to have more control. But his new job does not constitute the needed material change – it merely allows him more flexibility to fulfill his obligations as a joint custodial parent with extremely liberal rights of visitation.

Lastly, though a fifteen-year-old son professed his desire for shared custody, this preference is entitled to less weight in a modification action than in

an original custodial determination. *In re Marriage of Behn*, 416 N.W.2d 100, 101-02 (Iowa Ct. App. 1987). Nor does it constitute a material change in circumstances.

James has clearly not met his burden to show a substantial and material change in circumstances not contemplated by the dissolution court. The trial court is affirmed.

AFFIRMED.