

IN THE COURT OF APPEALS OF IOWA

No. 7-024 / 05-2109
Filed February 14, 2007

**IN RE THE MARRIAGE OF MICHAEL WAYNE RHINER
AND SHERRI LEE RHINER**

**Upon the Petition of
MICHAEL WAYNE RHINER,**
Petitioner-Appellee,

**And Concerning
SHERRI LEE RHINER, n/k/a SHERRI LEE CHRISTENSEN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Martha L. Mertz,
Judge.

A mother appeals from a modification order awarding joint legal custody
and modifying the father's child support obligation. **AFFIRMED.**

Ronald R. Rieper, Des Moines, for appellant.

Lori M. Holm, Des Moines, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

A mother appeals from a modification order awarding joint legal custody and modifying the father's child support obligation. She contends the trial court's decision to award joint legal custody, its finding establishing monthly child support, and the modification of transportation responsibilities are not supported by the evidence. We affirm.

I. Background and Facts

Sherri Christensen and Michael Rhiner are the parents of two children: Chad, born in July 1989, and Shelby, born in November 1992. The parties' marriage was dissolved by decree filed in June 1995. The original decree provided that the parties have joint legal custody of the minor children. Sherri was designated the primary caregiver, subject to Michael's reasonable visitation rights. Michael was ordered to pay \$550 per month in child support.

A June 1999 modification of the decree awarded Sherri sole legal custody and restricted Michael's visitation. Michael's supervised visitation schedule was to continue until he demonstrated that he had undergone a substance abuse evaluation and treatment, if appropriate, for his anger and abuse issues. The modification ordered Michael to pay monthly child support of \$431.38.

In March 2005, Sherri sought modification of child support and allocation of tax exemptions. Michael filed a counterclaim, seeking denial of modification of child support and allocation of tax exemptions, a change from Sherri's sole legal custody to joint legal custody, and a more liberal visitation schedule.

In November 2005, the district court entered a modification order which provided for joint legal custody of Chad and Shelby and increased Michael's

monthly child support to \$706.¹ A December 2005 order nunc pro tunc provided that Michael shall provide transportation at the commencement of visitation and Sherri at the conclusion. Sherri appeals.

Our review is de novo. Iowa R. App. P. 6.4. We are not bound by the trial court's findings of facts, but we give them deference because the trial court had a firsthand opportunity to view the demeanor of the parties and evaluate them as custodians. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998); see also Iowa R. App. P. 6.14(6)(g).

II. Merits

Sherri contends the trial court's decision to award joint legal custody was not supported by a preponderance of the evidence. Modification of the custodial terms is appropriate where there has been a substantial change in the circumstances. *Walton*, 577 N.W.2d at 870. Michael has complied with the requirements of the 1999 modification including completion of a domestic assault class, participation in a substance abuse program and follow-up care, and attendance at "Children in the Middle." Additionally, he provided specimens for urinalysis twice monthly, which were negative except for one test in the spring of 2005. He has been exercising unsupervised visitation with Sherri's knowledge and acquiescence. Because he has not been a joint legal custodian, he has been denied access to information regarding his children. We agree with the trial court's conclusion that the conditions since entry of the 1999 modification have so materially and substantially changed that it is in the children's best interests to change the legal custody to joint legal custody.

¹ The parties stipulated to a visitation schedule at the time of trial.

Sherri further contends that the trial court's finding establishing Michael's monthly child support was not supported by a preponderance of the evidence and argues it should be based on his 2004 gross earnings. A parent's current monthly income must be determined from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). The record indicates that Michael's 2004 gross income was over \$5000 greater than it had been the previous two years. Michael testified that the additional income was an aberration due to overtime earnings. He further testified his current employer's business was being sold and he anticipated no overtime earnings when he switched jobs. The trial court's calculation was based on Michael's hourly rate at forty hours per week. We conclude the trial court correctly determined Michael's income based on the evidence presented at trial. *See In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992) (“[W]here overtime pay appears to be an anomaly or is uncertain or speculative, a deviation from the child support guidelines may be appropriate.”).

Finally, Sherri asserts that the trial court's modification of the transportation responsibilities is not supported by the evidence.² The modification to transportation responsibilities is consistent with the other modifications. We concur with the trial court's modification.

² Sherri cites the trial transcript as support for the proposition that she and Michael do not communicate effectively. The entire record supports that proposition. However, the parties' communication problems are immaterial to the issue of transportation.

III. Conclusion

Upon our de novo review of the issues, we fully agree with the trial court's findings of fact, conclusions of law, application of law to the facts found, and resulting modification order. We therefore affirm. See Iowa Ct. R. 21.29(1).

AFFIRMED.