

IN THE COURT OF APPEALS OF IOWA

No. 23-1239
Filed March 27, 2024

**IN RE THE MARRIAGE OF STAESHA OUI MARIE WILSON
AND RAYMOND VICTOR WILSON**

**Upon the Petition of
STAESHA OUI MARIE WILSON, n/k/a STAESHA OUI MARIE FELTON,**
Petitioner-Appellee,

**And Concerning
RAYMOND VICTOR WILSON,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Jeanie Vaudt, Judge.

A father appeals the modification of the parties' dissolution decree, which awarded the mother sole legal custody of their two minor children. **AFFIRMED.**

Michael Arleth of Arleth Law, Des Moines, for appellant.

Joseph G. Bertogli, Des Moines, for appellee.

Considered by Schumacher, P.J., and Ahlers and Langholz, JJ.

SCHUMACHER, Presiding Judge.

Raymond Wilson appeals the modification of the parties' dissolution decree that awarded his former spouse, Staesha Fenton, formerly Staesha Wilson, sole legal custody of their two minor children. As Raymond does not support the children's best interests, especially their continued need for therapy, and has focused on his own interests rather than those of the children, we affirm.

I. Background Facts & Proceedings

Raymond and Staesha were previously married and have two minor children, A.M.W., born in 2007, and A.S.W., born in 2013.¹ In their original dissolution proceedings, the parties agreed to share joint legal custody and joint physical care of the children, exchanging the children each Sunday. The parents also had a mid-week visit each Wednesday when the children were with the other parent. The parties' stipulation was incorporated into the dissolution decree, filed in March 2020.

A little over a year after the dissolution proceedings were finalized, Staesha petitioned to modify the decree, alleging that there had been a substantial change in circumstances. She asked the court to place the children in her physical care. She asserted Raymond failed to co-parent with her, prevented the children from communicating with her while they were in his care, and limited the children's activities. Staesha later amended her petition to include a request for sole legal custody of the children.

¹ The parties have a third child, who is now an adult. This child's welfare is not affected by the present proceedings.

While Staesha's modification petition was pending, Raymond filed an application for a rule to show cause, alleging Staesha was in contempt because she had not been requiring the children to attend visitation. And he claimed Staesha was attempting to estrange the children from him. Following a hearing, the district court found Staesha willfully and intentionally violated provisions of the dissolution decree.²

In the modification proceeding, the court appointed Kelly Ramsey as a child and family reporter. Ramsey interviewed Raymond, his wife Cheryl, Staesha, the children, and the children's therapists. In a written report, Ramsey stated:

I struggle with what I believe to be Ray and Cheryl's overbearing and often times nonsensical and impractical rules and guidelines he places on the children. While it is important and imperative to have rules and boundaries for children to follow, Ray and Cheryl seem to have come up with rules that have consequences that are inappropriate and, for lack of a better term, "do not fit the crime." When asking Ray about extracurricular activities and the allegations that he will not allow the children to participate in many of them and if they do, not on his parenting time, he stated that they do not align with his family's morals or biblical principles. He further stated that a lot of the sports, track in particular, required uniforms that are inappropriate for girls to wear and it is not what God wants therefor, he won't allow it.

A.M.W. told Ramsey she had to be two people, depending on if she was at her mother's home or her father's home. A.S.W.'s therapist told Ramsey that A.S.W. stated she felt "more herself" in her mother's care. Both children have feelings of hopelessness and constant anxiety. Ramsey also noted that

² Staesha petitioned for writ of certiorari. The Iowa Supreme Court granted the writ and transferred the case to the Iowa Court of Appeals. After the modification hearing, but before the district court's decision, the Iowa Court of Appeals annulled the writ. See *Felton v. Iowa Dist. Ct.*, No. 21-1398, 2023 WL 1809820, at *6 (Iowa Ct. App. Feb. 8, 2023).

Raymond's new rules were very different from how he and Staesha had agreed to raise and discipline the children as a married couple. Raymond stated that the "old family way of doing things negatively impacted everyone" so he set new boundaries and rules. And Raymond informed the evaluator that transportation to and from school was a privilege and that the children had to earn his "taxi service." Ramsey recommended that the children be placed in Staesha's sole legal custody and physical care and that the children continue with therapy.

Following a hearing, the district court modified the parties' dissolution decree in April 2023 and granted Staesha sole legal custody and physical care of the children. Raymond was granted visitation and ordered to pay child support. The court found there had been a substantial change in circumstances because the parties were no longer able to communicate about the children. The court found, "Under this record the court finds that Raymond's parenting skills are not designed to nurture his children. Rather, they are largely focused on punishing his children for perceived slights they have inflicted on him and/or Cheryl, by violating disciplinary rules he imposes on A.M.W. and A.S.W."

As an example, Raymond required the children to finish meals within thirty minutes. If they did not, the food was thrown away, and the children lost other privileges. Raymond did not permit A.M.W. to participate in cross-country or A.S.W. to participate in gymnastics during the weeks they were in his care. He stated he thought the clothing for these activities was improper. And he did not take the children to counseling appointments during the weeks the children were in his care. The district court stated, "He wants A.M.W. and A.S.W. to spend every

moment with him during his parenting time but overlooks the harm he is causing them by advancing his own interests over theirs.”

The district court denied Raymond’s motion pursuant to Iowa Rule of Civil Procedure 1.904(2). Raymond now appeals.

II. Standard of Review

We review dissolution of marriage decrees in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). In equitable actions, our review is de novo. Iowa R. App. P. 6.907. “In such cases, ‘[w]e examine the entire record and adjudicate anew rights on the issues properly presented.’” *Knickerbocker*, 601 N.W.2d at 50–51 (alteration in original) (citation omitted). “In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them.” Iowa R. App. P. 6.904(3)(g). Our overriding consideration is always the children’s best interests. Iowa R. App. P. 6.904(3)(o).

III. Sole Legal Custody

Raymond contends the district court should not have granted Staesha’s request to modify the parties’ dissolution decree to award her sole legal custody of the children. The terms “joint custody” and “joint legal custody” are defined in Iowa Code section 598.1(3) (2021) to mean:

[A]n award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities of joint legal custody include but are not limited to equal participation in decisions affecting the child’s legal status, medical care, education, extracurricular activities, and religious instruction.

“To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children’s best interests make it expedient to make the requested change.” *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). The changed circumstances must be “more or less permanent” and relate to the welfare of the children. *Id.* “The changed circumstances must not have been contemplated by the court when the decree was entered.” *Id.*

“The party seeking modification of a decree’s custody provisions must also prove a superior ability to minister to the needs of the children.” *In re Marriage of Harris*, 877 N.W.2d 434, 440 (Iowa 2016). “The party seeking to modify a dissolution decree thus faces a heavy burden, because once custody of a child has been fixed, ‘it should be disturbed only for the most cogent reasons.’” *Id.* (citation omitted). In considering whether a parent has a superior ability to meet the children’s needs, “[o]ur focus is on the long-range best interests of the children.” *In re Marriage of Grabill*, 414 N.W.2d 852, 853 (Iowa Ct. App. 1987).

On appeal, Raymond does not dispute there has been a substantial change in circumstances. He asserts, however, “the existence of problems does not automatically justify a change in custody.” He blames Staesha for his problems with the children, claiming she did not support his parenting decisions. Raymond states that his discipline of the children is within the bounds of reasonable parental discretion and should not be a reason for modification of the dissolution decree.

Raymond relies in part on the findings in the contempt action, which found Staesha had not followed the terms of the dissolution decree.³ See *Felton*, 2023 WL 1809820, at *5–6. But Raymond has also played a large role in the circumstances that necessitate a change in the children’s legal custody status. The fact that Staesha was found in contempt does not conclusively settle the issue of what result should be reached in the face of the changed circumstances. That is because in a contempt action, we consider whether a person had a duty to obey a court order and willfully failed to perform that duty. *Id.* at *4. We have a different focus in the modification action—our overriding consideration is the best interests of the children. See *Nicolou v. Clements*, 516 N.W.2d 905, 906 (Iowa Ct. App. 1994). Thus, statements about whether Staesha violated the provisions of the dissolution decree before the contempt action do not conclusively answer the issue of whether joint legal custody continued to be in the children’s best interests.

The evidence presented at the modification hearing showed the parties can no longer effectively communicate about the children. Raymond told Staesha he did not want to communicate in person, or by telephone, text, or email. He stated the only way Staesha and the children could contact him was through a parenting app. Also, the parties could not discuss matters to reach joint decisions regarding the children. Rather than Raymond and Staesha having the ability to reach a mutual decision about the children’s participation in activities, the parents were unable to jointly agree about the children’s involvement in extracurricular sports or counseling. Raymond’s decisions required the children to live a completely

³ We note that following the contempt ruling in district court on September 2, 2021, Staesha ensured that the children attended visitation.

different style of life when they were in his care than while they were in Staesha's care or in the parties joint care prior to the dissolution decree. This drastic change has caused both children stress and anxiety.⁴

A family therapist testified A.M.W. had been diagnosed with generalized anxiety and A.S.W. was diagnosed with an adjustment disorder.⁵ She stated the children were "very tense, very keyed up." In her written records, the family therapist noted A.M.W. had "feelings of hopelessness and helplessness," "conflict with family members; and feelings of insecurity." Ramsey, the child and family reporter, noted A.M.W. described herself as "anxious and hopeless." A.S.W. stated she was afraid of getting in trouble at Raymond's house. Ramsey recommended the children continue in therapy. Staesha testified A.M.W. was "feeling suicidal, depressed, hopeless, confused. Her mental state was not good or stable." Staesha stated A.S.W. was "having frequent panic attacks and regression." Her panic attacks took the form of "fully kicking, screaming, yelling." Raymond was not supportive of the children's attendance at therapy and refused to take them during the weeks they were in his care.

Raymond's testimony at the modification hearing focused on his rights, the rules of his household, and his ability to impose punishment for each small infraction of those rules. In addition to the time limitation on consumption of food

⁴ In affirming the award of sole custody to the mother, we are not indicating a preference of lenient parenting versus strict parenting. But we do recognize the drastic difference between Raymond's new parenting style and the style followed by both parents during the marriage.

⁵ The family therapist testified in the contempt proceedings. The parties' agreed the transcript from the contempt hearing could be considered in the modification proceedings.

already mentioned, the children had to ask before leaving a room. If a child forgot an item at Staesha's house, they had to go without it for the week they were at his house, even if it were an important homework assignment. There is no information in the record to show these rules, or the consequences for breaking the rules, were in the children's best interests.

Raymond did not permit the children to contact Staesha while they were at his house, although the parties' stipulation provided the parties were to have liberal contact "when the children were in the other parent's care." He did not permit the children to bring phones or tablets to his house because he did not want them to contact Staesha. Raymond did not permit the children to have a picture of Staesha in their rooms. He did not want the children to wear clothes that Staesha provided for them, and he wanted them to only wear clothes he kept at his house. The district court found Raymond "overlooks the harm he is causing [the children] by advancing his own interests over theirs."

We affirm the district court's decision placing the children in Staesha's sole legal custody. As Raymond does not appeal the decision granting Staesha physical care of the children, we affirm on this issue as well.

IV. Appellate Attorney Fees

Staesha seeks attorney fees for this appeal.⁶ "Appellate attorney fees are not a matter of right, but rather rest in this court's discretion." *In re Marriage of*

⁶ Raymond, in his reply brief, also requested appellate attorney fees. But "[p]arties cannot assert an issue for the first time in a reply brief. When they do, this court will not consider the issue." *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996) (internal citation omitted); accord *In re Marriage of Comstock*, No. 15-1570, 2016 WL 4803930, at *9 n.7 (Iowa Ct. App. Sept. 14, 2016) ("In his reply brief, [the appellant] asserts he should be awarded appellate

Stenzel, 908 N.W.2d 524, 538 (Iowa Ct. App. 2018) (quoting *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006)). When considering whether to exercise our discretion, we consider “the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal.” *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005) (citation omitted). Although Staesha is the prevailing party, we also consider her ability to pay her own appellate attorney fees, Raymond’s income, and the relative merits of the appeal. We determine Staesha should pay her own appellate attorney fees.

AFFIRMED.

attorney fees. We do not address issues raised for the first time in a party’s reply brief.”). We do not consider his request.