IN THE COURT OF APPEALS OF IOWA

No. 17-0757
Filed November 22, 2017

**IN RE THE MARRIAGE OF DANIELLE LEE STONE
AND CHARLES E. STONE**

**Upon the Petition of
DANIELLE LEE STONE,**
Petitioner-Appellant,

**And Concerning
CHARLES E. STONE,**
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Stuart P. Werling, Judge.

Danielle Stone appeals the district court's order modifying the dissolution decree dissolving her marriage to Charles Stone. **AFFIRMED AS MODIFIED.**

Andrew B. Howie of Shindler, Anderson, Goplerud & Weese, P.C., West Des Moines, for appellant.

Robert Gallagher Jr. and Peter G. Gierut of Gallagher, Millage & Gallagher, P.L.C., Bettendorf, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, Judge.

Danielle Stone appeals the district court's order modifying the dissolution decree dissolving her marriage to Charles Stone, claiming the court erred in (1) failing to modify legal custody, (2) awarding her sole decision making authority concerning educational and medical matters, (3) awarding her both tax exemptions and (4) modifying visitation. We find there is no basis to modify the legal custody of the children, award sole decision making authority to Danielle on medical and educational matters, or modify the distribution of tax exemptions. However, we find the district court improperly modified the visitation provisions of the dissolution decree. We affirm the district court as modified.

I. Background Facts and Proceedings

Danielle and Charles' marriage was dissolved on October 23, 2012. The parties were granted joint legal custody of their two minor children, K.S. and Z.S. Danielle was granted physical care of the children. At the time of the dissolution Danielle lived in Bettendorf, Iowa, and Charles lived in Mount Clemens, Michigan, a suburb of Detroit. Charles was in the process of moving from Mount Clemens to Royal Oak, another suburb of Detroit approximately twenty miles closer. Under the terms of the decree Charles was responsible for the transportation of the children to and from Michigan during his visitation.

K.S. was diagnosed with a reading-based learning disability after the entry of the decree. Both Danielle and Charles claim they took appropriate action to address the diagnosis though Danielle claims Charles did not adequately support K.S.'s progress during his visitation. In 2015, Z.S. was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Z.S. struggled both educationally and

socially culminating in a suicide threat. Danielle and Charles were unable to agree on a treatment plan. Charles supported non-medication based treatments first, including martial arts and behavior modification before moving to medication based alternatives. Charles also claims he was not provided adequate information to make a fully informed decision.

Danielle filed a petition to modify the dissolution decree to award her either sole legal custody of both children or establish an exclusive right to make decisions regarding educational and medical matters for the children and the right to claim both children as tax exemptions. Charles counterclaimed for modification of visitation. The district court found awarding sole legal custody or decision making authority was inappropriate. The district court did modify visitation in favor of Charles, requiring Danielle to transport the children approximately halfway, after finding his move to Michigan was a material change not contemplated at the time of the original decree. The district court also refused to modify the award of income tax exemptions. Danielle now appeals.

II. Standard of Review

Equitable actions are reviewed de novo. Iowa R. App. P. 6.907. We examine the record and adjudicate the rights of the parties anew. *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998). Because the district court is in a unique position to hear the evidence, we defer to the district court's determinations of credibility. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). While our review is de novo, the district court is given latitude to make determinations, which we will disturb only if equity has not been done. *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005).

III. Sole Legal Custody

Danielle claims Charles unreasonably withheld his consent to treat Z.S.'s ADHD and unreasonably interfered with or did not properly continue efforts to accommodate K.S.'s reading-based learning disability, and as a result, custody should be modified or she should be given sole decision making in the areas of education and medical treatment. We place a high burden on a parent who seeks modification based on the tenet that "once custody has been fixed it should be disturbed for only the most cogent reasons." *In re Marriage of Brown*, 778 N.W.2d 47, 52 (Iowa Ct. App. 2009). The district court stated, "At trial, Charles complained he was not provided with sufficient information upon which he could make an informed decision to apply medication to his child. He expressed concern that the medication could be addictive, a concern the doctor testified was unwarranted. Charles testified he did not know this until he heard the doctor's testimony at trial and he is now satisfied the [medication] is appropriate."

We agree with the district court's summation, "[I]t is obvious Charles simply wanted information so he could make an informed choice. . . . [Danielle] merely gave Charles such information as she deemed appropriate. That Charles felt he was not fully informed was reasonable."

Danielle also requested sole decision making over educational decisions for the children. Danielle testified K.S. "was in summer school for three of the weeks that I had her, but they were not convenient weeks for [Charles]. He wasn't thrilled with the selection of time he received" for summer visitation. Danielle claims this is clear and convincing evidence Charles' hostility toward

Danielle negatively affected K.S. and her education requirements. This argument is without merit. It is likely Charles was upset he was unable to freely exercise visitation with his children over the summer, however, even though he "wasn't thrilled" he allowed the children to participate in summer school and other summer activities. We agree with the district court's finding there is no reasonable basis to change legal custody or grant Danielle sole decision making power over medical and educational issues.

IV. Visitation

In order to modify visitation provisions of a dissolution decree a party "must establish by a preponderance of evidence that there has been a material change in circumstances since the decree and that the requested change in visitation is in the best interests of the children." *In re Marriage of Salmon*, 519 N.W.2d 94, 95–96 (Iowa Ct. App. 1994). The district court found Charles' move from Iowa to Michigan was a change in circumstances not contemplated in the original decree. We disagree. At the time of the original decree Charles had already moved to Michigan and was preparing for a move within Michigan. The original decree also explicitly references Charles' Michigan address. It is clear this fact was contemplated at the time of the original decree. We find there is no material change in circumstances and set aside the district court's modification regarding visitation.

V. Tax Exemptions

Finally Danielle claims she should be awarded the ability to claim both children as tax exemptions. Danielle claims the additional money she would receive due to the exemptions would be used to pay for further medical and

educational expenses for the children. In her reply brief Danielle claims the tax exemptions are "about the money to [Robert]." This argument is diminished by the fact Danielle is pursuing the exemptions in order to have more money and the issue of tax exemptions is inevitably tied to money.

The record does not show Danielle is suffering significant additional expenses due to the children's educational and medical needs. Robert pays a significant portion of the children's uncovered medical expenses and contributed money toward non-pharmaceutical treatment for Z.S. As visitation will not be modified travel expenses would not justify the award of exemptions either. We find there is no material change in circumstances justifying an adjustment of tax exemptions. *Cf. Marriage of Rolek*, 555 N.W.2d 675, 679 (Iowa 1996).

VI. Attorney Fees

Charles requests appellate attorney fees. "An award of attorney's fees is not a matter of right but rests within the discretion of the court." *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). We find a grant of appellate attorney fees is inappropriate in this case.

AFFIRMED AS MODIFIED.