

IN THE COURT OF APPEALS OF IOWA

No. 0-068 / 09-1073
Filed February 24, 2010

CHRISTINA M. LACHNER,
Petitioner-Appellee,

vs.

NATHANIEL HEILEMAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Dallas County, William H. Joy,
Judge.

Nathaniel J. Heileman appeals from the district court's refusal to modify a
custody order. **AFFIRMED.**

Scott Fisher, West Des Moines, for appellant.

Jennie Wilson, Perry, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

Nathaniel J. Heileman appeals from the district court's refusal to modify a custody order concerning his son, who was born in October of 2005. Nathaniel contends the district court should have modified the March 26, 2008 order providing that the child be in the joint legal custody of his parents and that the child's mother, Christina M. Lachner, be awarded primary physical care. We affirm.

SCOPE OF REVIEW. Our scope of review of a modification action is de novo. *In re Marriage of Walters*, 575 N.W.2d 739, 740 (Iowa 1998). Although we give weight to the findings of fact made by the district court, especially as to the credibility of witnesses, we are not bound by those findings. *Id.* at 741. "We recognize that the district court 'has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity.'" *Id.*

BACKGROUND AND PROCEEDINGS. On March 26, 2008, the district court entered an order establishing custody, support, and visitation for the minor child. The order appears to have been the result of an agreement of the parties; they both signed approving it as to form and content as did their respective attorneys. On November 3, 2008, Nathaniel filed a petition to modify the decree, asking that primary physical care be given to him or that his visitation with the child be increased.

The matter came on for hearing on April 15, 2009. After hearing the evidence the district court, on April 28, 2009, found that Nathaniel had failed to

prove there had been a substantial change of circumstance so as to support a change in physical care and that primary physical care should remain with Christina. Nathaniel was given additional visitation. He was ordered to pay Christina \$750 for attorney fees and his child support obligation was set at \$188.52 a month.

SUBSTANTIAL CHANGE OF CIRCUMSTANCES. The first question we need to address is whether the record shows there has been a substantial change of circumstances such as is necessary for a modification of the custody provisions of a paternity decree. Courts are empowered to modify the custodial terms of a paternity decree only when there has been a substantial change in circumstances since the time of the decree, not contemplated by the court when the decree was entered, which was more or less permanent, and relates to the welfare of the child. *Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002), *see also In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983); *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996).

Nathaniel contends he showed a substantial change of circumstances. He contends that since the March 26, 2008 order Christina moved from Des Moines to Perry and moved in a home with Jerry Richardson, whom Nathaniel contends has three assault charges including one where Christina was the victim.¹ In its oral findings the district court found that Christina was living with

¹ Nathaniel contends that the stipulated order establishing custody, support, and visitation entered on March 26, 2008, fixes Christina's address for purposes of future modification actions. This issue may be of significance if we were faced with a determination of whether Christina had moved 150 miles or more since the entry of the order. See Iowa Code section 598.21D (2007). However, we find this argument is not

Richardson at the time the initial order was entered on March 26, 2008. Nathaniel contends and he testified that Christina was living in Des Moines at that time and in further support of this position he points to the order of March 26 where the district court found: “That the Petitioner, Christina M. Lachner, resides at 4040 Hubbell Avenue, #97, Des Moines, Polk County, Iowa”

Christina responds that she testified at the modification hearing she lived in Perry on March 26, 2008, Nathaniel was aware of this fact, and he knew where and with whom she was living.

Christina’s testimony, which the district court apparently believed, was that in March of 2008 she moved to 1606 Fifth Street.² She said she thought the move was on March 4th. She said her then attorney told her it did not make any difference that the order showed her as living on Hubbell Avenue in Des Moines. She further testified she moved to Perry because she had split up with her boyfriend, Jerry Richardson needed help with his daughter, and she needed help with her two sons. She and Richardson have a child together.

Giving the required deference to the district court’s credibility findings we affirm on this issue.

SUPERIOR CARE. Nathaniel also contends he showed that he can render superior care. The parent seeking to change the physical care from the

consequential in these proceedings as Christina only moved from Des Moines to Perry and the crux of Nathaniel’s complaint is not because she moved, but rather because she moved in with Jerry Richardson who has some criminal history. The order entered March 26, 2008, does not recite with whom Christina resides. Further, the evidence supports the trial court’s finding that Nathaniel was aware Christina was residing with Jerry Richardson at the time the March 26, 2008 order was entered.

² Though she did not testify the address was in Perry, upon reviewing her testimony in total it becomes apparent it was a Perry address.

primary custodial parent to the petitioning parent has a heavy burden and must show the ability to offer superior care. See *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980); *In re Marriage of Mayfield*, 577 N.W.2d 872, 873, (Iowa Ct. App. 1998).

Nathan contends that he is now married and can provide a more stable and wholesome life for the child than can Christina. He further contends that he and his wife have a child and they are more able to minister effectively to the needs of this child. Even if he had shown a substantial change of circumstances the evidence is insufficient to show that Nathaniel can render superior care.

AFFIRMED.