IN THE COURT OF APPEALS OF IOWA

No. 0-345 / 09-0813
Filed June 30, 2010

IN RE THE MARRIAGE OF CORY D. ANTLE AND TIFFANY C. ANTLE

Upon the Petition of

CORY D. ANTLE,
Petitioner-Appellee,

And Concerning,

TIFFANY C. ANTLE, n/k/a
TIFFANY C. NYLAND,
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Mother appeals the district court's order continuing joint physical care and resolving child support and medical insurance issues. **AFFIRMED AND REMANDED.**

Dennis D. Jasper, Bettendorf, for appellant.

Cory D. Antle, Davenport, pro se appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

Tiffany Antle, now known as Tiffany Nyland, appeals a district court order denying her petition to modify the physical care provisions of a dissolution decree. Tiffany also appeals the court's resolution of child support and medical insurance issues. We affirm the court's decision to continue joint physical care, but remand for a filing of the court's child support guidelines worksheet.

I. Background Facts and Proceedings.

When Tiffany and Cory separated in 2005, they agreed to share physical care of Alex, age four, by splitting weekday physical care and alternating weekend physical care. In August 2005, the district court approved Tiffany and Cory's stipulated dissolution decree granting joint legal custody and joint physical care. Cory was ordered to pay Tiffany $74.54 monthly for child support and to provide health insurance for Alex through his employment. Tiffany was ordered to pay to Cory one-half of the cost of Alex's health insurance.

In October 2007, two years after the dissolution when Alex was starting first grade, Tiffany filed a petition to modify the dissolution decree seeking: (1) physical care with visitation for Cory, (2) increased child support, (3) a ruling on health insurance coverage, and (4) attorneys fees.

At the time of the modification hearing in February 2009, Alex was in second grade. At the hearing Tiffany explained she had recently remarried and Alex gets along well with her husband, Andrew. Tiffany and Andrew will soon become parents and Alex has helped prepare the baby's room.

Alex also gets along well with Cory's girlfriend, Kaytharn, and her two daughters, ages three and eleven, who recently moved into Cory's home. Cory pays child support for his daughter Brooke, age nine. Cory has alternating weekend visitation with Brooke. Cory has worked hard to schedule vacations and visitations so all the children can spend family time together.

Tiffany refuses to talk to Cory by telephone, claiming he is intimidating. Consequently, communication concerning Alex is conducted by e-mail to Tiffany's work account. Recently, Tiffany added a home e-mail account. Cory did not reply to every e-mail communication Tiffany sent concerning Alex. Tiffany stated "on the whole," Cory is a good parent.

Tiffany also refused to allow Cory to pick up Alex at her home, which required Cory to e-mail Tiffany every week to determine Tiffany's designated pickup point. Tiffany did not utilize a consistent location. At the end of the hearing, Tiffany's attorney stipulated the parties now agree to a "curbside exchange at their homes to pick up and return" Alex.

Although the parties disagreed on which elementary school Alex should attend, Tiffany eventually agreed to Wilson Elementary and does not dispute it is a good school for Alex. Alex has a cousin attending Wilson and Cory's mother, Alex's grandmother, lives in the Wilson district and helps with transportation.

Cory and Tiffany also had disagreements regarding extra-curricular activities and daycare payments. At the modification hearing, Cory agreed to be more accommodating of Alex's extra-curricular schedule and also agreed to reconsider the disputed daycare payments.

Tiffany testified Alex was happy-go-lucky and unaffected by living in two different households during Alex's kindergarten year. However, Tiffany was concerned about Alex's behavior at school in February 2008 during first grade and met with the counselor and teacher. We note this is four months after Tiffany first requested a modification. When Alex exhibited some bullying behavior during second grade, Tiffany disciplined Alex with community service while Cory disciplined Alex by grounding him. Alex has met with a psychologist, who has helped him communicate, and is doing fine academically.

Before second grade, the parties agreed Cory would pay the school's registration fees and Tiffany would pay for all school supplies. The parties have shared physical care for over four years.

In March 2009 the district court ruled:

> According to Susan Blessing, Alexander's first grade teacher, Alexander did well in school and appeared to accept the custodial arrangement. Alexander did have a "rough patch" for about ten days in February of 2008 when he got a detention. This was around Tiffany's wedding and honeymoon. These problems abated once Tiffany returned from her honeymoon. Cory did and still does attend teacher conferences and drops in periodically to talk with the teachers. Overall, Ms. Blessing described Alexander as a pleasant student who has done well in school. Both Tiffany and Cory along with the witnesses of both parties describe Alexander as a happy, loving child who is outgoing, people person and who does well in school.

The court concluded Tiffany had not proved a material and substantial change of circumstances. Further, "[t]he Court is of the opinion that since Alex is getting older and in the second grade that the schedule should be changed to alternate weeks rather than splitting up the week . . . ." This schedule change is not an issue on appeal.

After the dissolution, Cory's earnings increased from $34,320 to $70,141 while Tiffany's earnings remained unchanged at $18,700. Consequently, the district court granted Tiffany's request for additional child support and increased Cory's monthly payment from $74.54 to $517.62, effective April 1, 2009. The court declined to award attorney fees.

The court denied Tiffany's and Cory's motions to amend and enlarge and this appeal followed.

II. Scope of Review.

We review this equity action de novo. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006). We have a duty to examine the entire record and "adjudicate anew rights on the issues properly presented." *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We are not bound by the district court's findings of facts, but we give them deference because the district court has a firsthand opportunity to view the demeanor of the parents and evaluate them as custodians. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998).

III. Modification of Custody.

Tiffany seeks physical care of Alex and details numerous incidents to show the parties are not cooperating, are not communicating, and do not show mutual respect. In seeking to modify the physical care arrangement, Tiffany has a heavy burden. *See In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). To change the custodial provisions, Tiffany "must establish by a preponderance of the evidence that conditions since the decree was entered

have so materially and substantially changed that [Alex's] best interests make it expedient" to modify custody. *See In re Marriage of Thielges*, 623 N.W.2d 232, 236 (Iowa Ct. App. 2000). A "substantial change in circumstances" involves changed conditions which are material as opposed to trivial, permanent or continuous as opposed to temporary, "and must be such as were not within the knowledge or contemplation of the court when the decree was entered." *In re Marriage of Pals*, 714 N.W.2d 644, 646-47 (Iowa 2006). Additionally, "a parent requesting a physical-care modification must also prove he or she has the ability to minister more effectively to the well-being of the parties' children." *Thielges*, 623 N.W.2d at 237.

The burden upon the parent seeking a change is heavy "because children deserve the security of knowing where they will grow up, and we recognize the trauma and uncertainty these proceedings cause all children." *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 213-14 (Iowa Ct. App. 1994). Consequently, once custody has been fixed, it "should be disturbed only for the most cogent reasons." *Id*. at 214.

The trial court had the parties before it and we give deference to its findings. After our de novo review, we likewise conclude Tiffany did not establish a substantial change of circumstances not contemplated at the time of the decree that was more or less permanent and related to the welfare of Alex. While the parties have disagreed on some parenting issues, none of the litany of issues raised by Tiffany shows a substantial change detrimental to Alex. Alex's first grade teacher testified, "I didn't see necessarily a big difference between mom

and dad's house . . . ." Further, this teacher considered Alex's February 2008 misbehavior to be "almost a blip in time because he really did – he had such a successful first-grade year anyway . . . ." Alex's teacher explained her meetings with Tiffany were usually at Tiffany's request and Cory was not invited to the meetings.

Additionally, Tiffany's proposed modification ignores the fact "it is generally in the children's best interests to have the opportunity for maximum continuous physical and emotional contact with both of their parents." *Thielges*, 623 N.W.2d at 238. Joint physical care also furthers Alex's relationships with his half-siblings at both homes. We conclude it is in Alex's best interests to continue to have the shared parental access he has been accustomed to for over four years and which has allowed him to become a successful student. In light of our conclusion, we find it unnecessary to decide whether Tiffany is the superior caretaker. We agree with and adopt the district court's ruling:

> The parties, for the most part, have been able to agree on what is in the best interest of Alexander. There have been disputes and petty actions between the parties on occasion which are indicative of immature behavior, but these, taken as a whole, do not form the basis for a finding by the Court that there is a substantial and material change in circumstances not within the contemplation of the Court at the time of the decree that would justify changing the physical custody from joint custody to the custody of just one parent.

IV. Child Support and Medical Insurance.

Tiffany first argues the court abused its discretion by not making its modified child support payments retroactive. Iowa Code section 598.21C(4) (2007), provides child support "may be retroactively modified." The use of the

word "may" gives the trial court discretion in deciding whether modified support payments should be effective retroactively or after the date of its modification order. *See In re Marriage of Ober*, 538 N.W.2d 310, 313 (Iowa Ct. App. 1995). We find no abuse of discretion.

Second, Tiffany argues the court erred in not providing the child support guideline worksheets for review as requested in her motion to amend and enlarge. We agree and remand for the court to file its guideline worksheets.

Finally, Tiffany appeals the court's failure to end her payments for Alex's medical insurance. The dissolution decree provided Tiffany would pay to Cory one-half of the cost of Alex's medical insurance. Tiffany testified instead of making her payments every two weeks, she has been paying a "double" amount monthly. Because there are twenty-six weeks of payment owed each year, Tiffany admits she has not paid all the insurance reimbursement owed. Tiffany explained Alex is now covered by the medical and dental insurance policies through Andrew's employer and requests a modification to make her the primary insurance provider and to end her payments to Cory.

When the court's modification decree did not address this issue, Tiffany requested a ruling in her motion to amend and enlarge. In denying Tiffany's motion, the court stated:

> [Tiffany] also argues that she should be given credit for the $50 that she pays to [Cory] for insurance for the child. The court indicated at that time that it would consider what effect, if any, this would have on the child support amount. After calculations, the court finds that the difference is negligible and declines to change the amount of child support ordered in its ruling.

On appeal, Tiffany argues she did not request child support be changed, "but rather requested the reimbursement of one-half of the medical insurance to Cory should cease." *See In re Marriage of Goodman*, 690 N.W.2d 279, 285 (Iowa 2004). Neither party has appealed the amount of support ordered to be paid by Cory in the modification decree. After our de novo review, we decline to modify the dissolution decree provision requiring Tiffany to reimburse Cory for one-half the cost of maintaining medical insurance on Alex.

VI. Attorney Fees.

Tiffany seeks appellate attorney fees, which are discretionary. *See In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa Ct. App. 2005). We decline to award attorney fees. Costs are taxed to Tiffany.

AFFIRMED AND REMANDED.