IN THE COURT OF APPEALS OF IOWA

No. 0-819 / 10-0868
Filed November 24, 2010

UPON THE PETITION OF
RODNEY E. BARNETT
AND DENISE A. RUSSELL,
f/k/a DENISE A. THOMPSON

Upon the Petition of
Rodney E. Barnett,
Petitioner-Appellant,

And Concerning
Denise A. Thompson,
n/k/a Denise A. Russell,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Michael Huppert, Judge.

Rodney Barnett appeals from the district court's denial of his petition to modify the parties' custody, visitation, and support decree. **AFFIRMED.**

Rodney E. Barnett, Des Moines, appellant pro se.

Kent A. Balduchi, Des Moines, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Rodney Barnett and Denise Russell are the parents of D.B., born in March 1998. The latest order governing custody, visitation, and support was entered on June 1, 2006, following a mediated settlement, under which the parties have joint legal and physical care of D.B., and a "parenting plan" described as follows:

> This Parenting Plan provides for [D.B.'s] time, to commence at the end of the school year, to be four (4) days with Rodney, followed by three (3) days with Denise, followed by three (3) days with Rodney, followed by four (4) days with Denise, and so forth thereafter. Thus over two weeks, each party shall have [D.B.] for the same length of time. This shall continue in rotation.

Rodney filed a petition for modification on February 11, 2009, alleging a substantial change of circumstances warranted placing D.B. in Rodney's physical care. The district court denied the petition and Rodney now appeals.

Upon our de novo review of the record, *see* Iowa R. App. P. 6.907, we conclude there has not been a substantial change of circumstances warranting modification. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App.1996) ("Courts are empowered to modify the custodial terms of a dissolution 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 children."). We give weight to the district court's findings related to the parties' demeanor and differing communication styles, and we agree with the district court's assessment that any breakdown in communication has been "engineered" by Rodney's "unilaterally pronouncing" that all communication would be by "snail

mail." Like the district court, we find that the child is well-adjusted and generally doing well. We find no cogent reason to modify the June 2006 order.

Denise asks us to require Rodney to pay $5000 in appellate attorney fees. We enjoy broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In exercising this discretion, we consider several factors: the financial needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* Denise has had to defend the district court's ruling, but both have contributed to the need for repeated judicial intervention related to child custody. Neither party to this appeal has a far superior ability to pay the attorney fees. We decline to award Denise appellate attorney fees.

Costs of this appeal are taxed to Rodney.

AFFIRMED.