

IN THE COURT OF APPEALS OF IOWA

No. 0-824 / 10-1126
Filed January 20, 2011

**Upon the Petition of
JASON CRAIG BULLOCK,**
Petitioner-Appellant,

**And Concerning
JUSTINE NICOLE BOYD,**
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

A father appeals the district court order denying his request to modify the
paternity order granting the mother physical care of the parties' child.

AFFIRMED.

Arthur Buzzell, Davenport, for appellant.

Dennis Jasper, Bettendorf, for appellee.

Considered by Eisenhauer, P.J., Doyle, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings**

Jason Bullock and Justine Boyd are the parents of three-year-old Jaeger. The trial court's August 1, 2008 decree establishing Jason's paternity granted Jason and Justine joint custody of Jaeger. Justine was awarded physical care, subject to Jason's visitation rights specified in the decree. Jason was also ordered to pay monthly child support and provide medical insurance for Jaeger.

At and since the time the paternity decree was entered Jaeger has lived with Justine and her now five-year-old daughter, Jaliyah, at Justine's home in Davenport. Jason has also lived and worked in Davenport since that time. The record indicates he has faithfully exercised visitation and otherwise substantially complied with his obligations under that decree.

In May 2009 Jason filed an application to modify the physical care provisions of the paternity decree. Jason cited Justine's pending move to Colorado to pursue career opportunities as a substantial change of circumstances supporting his requested modification. The trial court's December 30, 2009 temporary order left Jaeger in Justine's physical care and modified Jason's visitation schedule to accommodate the logistical changes resulting from Justine's move to Colorado in June 2009.

Following a trial on the merits, the trial court denied Jason's requested modification. The trial court cited Justine's greater primary care experience and Jason's failure to prove he could provide superior physical care for Jaeger. The trial court also found Jason's history of domestic abuse and questionable

credibility weighed against awarding him physical care of Jaeger. Jason was ordered to pay \$1800 of Justine's trial attorney fees.

Jason appeals.

II. Standard of Review

In equity cases our review is de novo. Iowa R. App. P. 6.907. We examine the entire record and adjudicate the parties' rights anew on the issues properly presented on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g).

III. Physical Care

Jason contends it would be better for Jaeger to remain in the Davenport area. He claims Justine could pursue the same career path there as in Colorado. He states that the custodial arrangement they had while Justine lived in Davenport was working and there was no good reason to change that. He asserts that by moving to Colorado Justine is denying him maximum continuing contact with his child. Jason claims that if Justine is not willing to return to Iowa, then Jaeger should be placed in his care.

In issues concerning custody and physical care, we employ the same criteria regardless of whether the parties were married or unwed. *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994). A party seeking to modify physical care must first show a substantial change in circumstances since the entry of the decree. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). The party must show that because of the change in circumstances,

continued enforcement of the decree would result in positive wrong or injustice. *Maher*, 596 N.W.2d at 565. The change must be more or less permanent and relate to the welfare of the child. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa Ct. App. 1998).

A parent seeking to modify the physical care provision of a decree has a heavy burden. *In the Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa Ct. App. 1998). “A parent seeking to take custody from the other must prove an ability to minister more effectively to the children’s well being.” *Frederici*, 338 N.W.2d at 158. This heavy burden is imposed based on the principle that once physical care of a child has been fixed, it should be disturbed only for the most cogent reasons. *Id.*

Our de novo review of the record discloses abundant evidence supporting the trial court’s findings of fact and resulting ruling. We adopt them as our own. Like the trial court, we find Justine’s greater and successful primary care experience distinguishes her as Jaeger’s preferred physical care provider. Evidence indicating he has thrived in all respects while in her physical care cannot be seriously disputed. We also note the presumptively negative implications of separating Jaeger from Jaliyah weigh heavily against changing physical care. See *In re Marriage of Will*, 489 N.W.2d 394, 398 (Iowa 1992) (“There is a presumption that siblings should not be separated.”). Additionally, Jason’s admitted history of particularly vicious domestic abuse and resulting criminal record are factors that weigh against changing Jaeger’s physical care. See *In re Marriage of Daniels*, 568 N.W.2d 51, 55 (Iowa Ct. App. 1997) (“Domestic abuse is, in every respect, dramatically opposed to a child’s best

interests.”). Even if we assume Justine’s move to Colorado constitutes a substantial change of circumstances, Jason’s modification claim nevertheless fails because he has failed to prove he can provide superior physical care for Jaeger.

We affirm the district court’s decision denying Jason’s request to grant him physical care of Jaeger.

IV. Attorney Fees

Justine seeks attorney fees for this appeal. “An award of appellate attorney fees is within the discretion of the appellate court.” *Markey v. Carney*, 705 N.W.2d 13, 26 (Iowa 2005). We determine Jason should pay \$1000 toward Justine’s appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Jason.

AFFIRMED.