

**IN THE COURT OF APPEALS OF IOWA**

No. 1-041 / 10-1514  
Filed April 27, 2011

**IN RE THE MARRIAGE OF JOSEPH L. NICHOLS  
AND LORI A. NICHOLS**

**Upon the Petition of  
JOSEPH L. NICHOLS,**  
Petitioner-Appellee,

**And Concerning  
LORI A. NICHOLS,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Scott County, Mary E. Howes,  
Judge.

Respondent appeals the district court decision modifying the physical care  
provision in the parties' dissolution decree. **AFFIRMED.**

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for  
appellant.

Dennis D. Jasper, Bettendorf, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.\*

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

**MAHAN, S.J.**

A decree of dissolution of marriage was entered for Joseph and Lori Nichols on September 18, 2008. The parties agreed Lori would have physical care of the parties' three sons, who had been born in 1992,<sup>1</sup> 1996, and 2000. Joseph had visitation and paid child support.

On July 31, 2009, Joseph filed an application seeking to modify the physical care provisions of the decree. The older two boys had expressed a desire to live with Joseph and had moved in with him. They found living with Lori to be stressful. The youngest child told a school counselor he wanted to spend more time with his dad and wrote a note expressing this thought. He stated he wanted to spend one week with his mother, and then one week with his father.

The district court issued a ruling on August 16, 2010, determining there had been a substantial change in circumstances in that Lori had interfered with the children's relationship with Joseph and all of the children had expressed an interest in spending more time with him. The court modified the decree to place the two oldest boys in Joseph's physical care. The court ordered that the parents share care of the youngest child, alternating care each week. The court granted visitation to Lori and ordered her to pay child support. Lori appeals.

Our review in this equitable action is de novo. Iowa R. App. P. 6.907. After carefully considering all of the evidence in the case, we agree with the district court's conclusion that Joseph has shown a substantial change in circumstances and can minister more effectively to the two oldest children's well-

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<sup>1</sup> We note that the parties' oldest child turned eighteen years old in November 2010. Under the terms of the dissolution decree, child support continues for a child between the ages of eighteen and nineteen if the child is still completing high school.

being. See *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). We also agree with the shared care arrangement for the youngest child. We affirm the district court's decision modifying the physical care provisions of the parties' dissolution decree.

Lori seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We determine Lori is not entitled to appellate attorney fees.

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

**AFFIRMED.**