

IN THE COURT OF APPEALS OF IOWA

No. 1-065 / 10-1400
Filed March 7, 2011

**Upon the Petition of
WADE WILLIAM PHILLIPS,**
Petitioner-Appellant,

**And Concerning
JESSICA LYNN BIEBER,**
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Sean McPartland,
Judge.

Wade Phillips appeals from the district court's denial of his petition for
modification of child custody, visitation, and support. **AFFIRMED.**

Melody J. Butz of Butz Law Offices, P.C., Cedar Rapids, for appellant.
Annette F. Martin, Cedar Rapids, and Ronald L. Ricklefs, Cedar Rapids,
for appellee.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

Wade Phillips and Jessica Bieber are the parents of one minor child. In 2003, the parents stipulated to a custody, visitation, and child support agreement, which was subsequently approved by the district court. The stipulation was drafted by Wade's attorney and consented to by Jessica, who appeared pro se. The stipulation provided that the parents share joint legal custody of the child, with Jessica having primary physical care. Additionally, the stipulation stated the parties desired a flexible visitation schedule for Wade and that Wade would have a minimum of nine days overnight per month with the child.

In 2009, Wade moved to modify child custody, support, and visitation. He asserted modification was justified by several alleged changes in circumstances. Following a hearing, the district court found circumstances did not warrant a change of custody or visitation. The district court awarded attorney fees to Jessica in the amount of \$1500. Wade appeals. Both parties request appellate attorney fees.

We review Wade's appeal de novo. See Iowa R. App. P. 6.907. We acknowledge, however, the virtues inherent in listening to and observing the parties and witnesses. *In re Marriage of Zebecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

Our primary consideration in determining the appropriate child custody and visitation is the best interests of the child. *In re Marriage of Wessel*, 520 N.W.2d 308, 309 (Iowa Ct. App. 1994). Once physical care of the child has been

established by a final decree, it should not be disturbed unless there has been a substantial change of circumstances since the time of the decree, not contemplated by the court when the decree was entered. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). The change must be more or less permanent and relate to the welfare of the child. *Id.* In addition, the parent seeking a change in custody has a heavy burden to prove by preponderance of evidence that he or she has an ability to render superior care. *In re Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa Ct. App. 1998).

Having reviewed the record, we agree with the district court's thorough and well-reasoned findings that there has not been a change of circumstances warranting a change of custody or visitation. Additionally, we cannot say the district court abused its considerable discretion in awarding Jessica attorney fees. We adopt the district court's reasoning as our own and for all the reasons stated therein, we affirm on these issues. See Iowa Ct. R. 21.29(a), (b), (d), (e).

Both parties seek an award of 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.* We decline to award appellate attorney fees to either party in this case.

AFFIRMED.