IN THE COURT OF APPEALS OF IOWA

No. 1-947 / 11-0895
Filed February 15, 2012

IN RE THE MARRIAGE OF JAMES DONALD KOFFMAN AND AMY JEAN KOFFMAN

Upon the Petition of

JAMES DONALD KOFFMAN,
Petitioner-Appellant,

And Concerning

AMY JEAN KOFFMAN, n/k/a AMY JEAN KOFFMAN-WELLS,
Respondent-Appellee.

Appeal from the Iowa District Court for Monroe County, Lucy J. Gamon, Judge.

Appeal from the district court's modification of the custody, visitation, and child support provisions of the parties' 2009 decree of dissolution of marriage. **REVERSED.**

Steven E. Goodlow, Albia, for appellant.

Richard J. Gaumer of Gaumer, Emanuel, Carpenter & Goldsmith, P.C., Ottumwa, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Danilson, JJ., but decided by Eisenhauer, P.J., Danilson, J., and Sackett, S.J.*

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

SACKETT, S.J.

James Koffman appeals from the district court's modification of the custody, visitation, and child support provisions of the 2009 decree that dissolved his marriage to Amy Koffman, n/k/a Amy Koffman-Wells. He contends the court "erred in finding that the standards for modification of child custody were satisfied." Amy failed to show a substantial change of circumstances such as would justify a modification of the custody provisions that she agreed to and that the district court made a part of the original decree. We reverse the district court's modification.

I. Background Facts and Proceedings.

The parties married in 2005. Their son, Carter, was born in 2006. In March of 2009, their marriage was dissolved by a decree that approved and incorporated the parties' stipulation. The parties stipulated to joint legal and physical custody with Amy having Carter on Sunday, Monday, and Tuesday, James having Carter on Wednesday, Thursday, and Friday, and Carter alternating Saturdays with each parent. Because of the joint physical care and the parties' incomes, they agreed no child support would be ordered. At the time of the dissolution, James lived in Albia and Amy lived in Blakesburg, about twelve miles away. The stipulation also provided Carter would attend school in the Moravia school district.[1]

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[1] Moravia was midway between the parties' homes before Amy moved. Neither party lived in the Moravia school district. Alternatively, if the Moravia school district closed, the parties stipulated Carter would attend school in Eddyville. Although Eddyville is approximately midway between Albia and Oskaloosa, it does not appear that either party seeks to have Carter attend school there now.

Amy changed her location three times after the dissolution was granted. In 2010, she married for the third time and she and her new husband bought a home in Oskaloosa. They had a daughter, born in 2011, and they decided Amy would stay home to raise the children. In July of 2010 Amy petitioned to have the court modify the dissolution decree, seeking primary physical care of Carter. Amy, without consulting James, enrolled Carter in preschool in Oskaloosa, despite the fact that the current decree made specific provisions for the school district the child would attend, and James attempted to enroll him in Albia but was denied admission because he was enrolled in Oskaloosa. It is very unfortunate that Amy made the school decision without consulting James, as this was a decision they should have made jointly. In August, James filed a "motion concerning preschool attendance," seeking a determination which preschool Carter would attend. Before a hearing could be held on James's motion, Carter started preschool in Oskaloosa. After the September hearing on the preschool motion, the court ordered that Carter continue in preschool in Oskaloosa pending final resolution of the modification action. James was ordered to assume the transportation costs.

The modification came on for hearing in April of 2011. In June, the court issued its ruling that placed Carter in Amy's physical care, established visitation for James, and ordered James to pay child support as calculated under the guidelines. James filed a motion to reconsider, alleging he had been the primary caretaker, and asking the court to award him primary physical care of Carter. The district court denied the motion with the exception of amending its earlier

ruling to provide that the parties share the costs of transportation for visitation equally. James appeals.

II. Scope and Standards of Review.

We review de novo actions to modify child custody or physical care. Iowa R. App. P. 6.907; *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). Because the district court has the opportunity to observe and hear the witnesses, we give weight to its findings regarding credibility and other facts, but are not bound by them. *Zabecki*, 389 N.W.2d at 398.

III. Merits.

Modification. James frames his issue on appeal as the court "erred in finding that the standards for modification of child custody were satisfied." The standards for modification of a physical care arrangement are well-established but bear repeating. There must be "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 child. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996).

James argues there are only three changes in circumstances, all caused by Amy, none of which are material or substantial: Amy moved, she remarried and had another child.

The parties live farther apart, which affects the time Carter spends in the car being transported between their homes.[2] The parties have informally modified the visitation provisions in the original stipulation, which provided for each parent having equal time with Carter, so that James has Carter one more overnight than originally stipulated. According to the terms of the parties' stipulation, Carter was to attend school in Moravia. Both agree the Moravia school district is no longer an appropriate option for Carter, because it is south of where both parties live and neither lives there.

Carter is fortunate to have two loving parents who care and provide for him. The record before us provides clear evidence of the actions of both parents, during the period since the dissolution, to develop and maintain their relationship with Carter, to meet his needs, and to help him grow to be a healthy, well-adjusted boy.

James has steady employment and he is involved in Carter's school and extracurricular functions. James provides most of the transportation for Carter's visitation, including driving Carter to a babysitter in the morning before preschool, returning after preschool to drive Carter to a babysitter in Albia, and also taking Carter to sports practices in Oskaloosa. During oral arguments, James's attorney affirmed James's willingness to continue driving Carter to school in Oskaloosa, although he would prefer that Carter attend school in Albia. James has always lived in Monroe County and has family support there. James often

[2] The district court found the parties live twenty-three miles apart. James asserted the distance is thirty-five miles.

takes Carter with him when doing chores with the cattle or working on the farm, so Carter has many outdoor experiences he might not otherwise have.

The district court concluded circumstances had materially and substantially changed since the decree, the changes are more or less permanent, and some of the changes could not reasonably have been within the contemplation of the court when it issued its decree. "The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons." *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). We agree there have been changes, but we do not find "that conditions since the decree was entered have so materially and substantially changed that the [child's] best interests make it expedient to make the requested change." *See id.*

The decree recognized and it was in the contemplation of the court and the parties that Carter would attend school and if the parties were in different communities, that arrangements for transportation to school by one or both parents would need to be made. An argument could be made that a child should not spend considerable time with a parent in a car and a counter argument can be made that a parent who transports a child to school has the benefit of the child's undivided attention and the experience can increase the parent's and the child's bond. The parents continue to live in close enough proximity to each other that there is no showing to meet a substantial change in circumstances. We do not find the changes in Amy's life warrant a change in the shared physical care the parties adopted in their stipulation. With no change in custody, there is

no need to modify the child support provisions of the decree. We therefore reverse the modification of physical care and child support made by the district court.

REVERSED.