

IN THE COURT OF APPEALS OF IOWA

No. 2-1125 / 12-1010
Filed February 13, 2013

**IN RE THE MARRIAGE OF KATHRYN L. HAMPTON
AND ROBERT E. HAMPTON**

**Upon the Petition of
KATHRYN L. HAMPTON,**
Petitioner-Appellee,

**And Concerning
ROBERT E. HAMPTON,**
Respondent-Appellant.

Appeal from the Iowa District Court for Buchanan County, George Stigler,
Judge.

A father appeals from the dismissal of his petition to modify joint physical
care. **AFFIRMED.**

Robert E. Hampton, Jesup, pro se.

Kathryn L. Hampton, Jesup, pro se.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

Robert Hampton appeals from the dismissal of his petition for “modification of physical placement.” He contends the court abused its discretion in dismissing the petition without allowing the parties to present all their evidence. He also contends the court failed to consider the children’s best interests when it dismissed his petition for modification. We affirm.

The marriage of Robert and Kathryn Hampton was dissolved in July 2007. The parties agreed to joint legal custody and joint physical care, with each parent having the children alternating weeks. Robert agreed to monthly child support in the amount of \$605, but was not required to pay child support for the period Kathryn and the children lived in the marital home before its sale. Since the dissolution, Kathryn has worked only rarely.

In June 2011 Robert filed a petition for modification of physical placement seeking physical care of the children and modification of child support based on the change in physical care. At the time of the April 2012 hearing on the petition the children were seventeen and twelve years old.¹ The allegations in the petition included Kathryn’s failure to be employed and provide support for the children, instances of contempt for her failure to pay a portion of uncovered medical expenses, and her “continued disregard for the law” as evidenced by several citations for failure to register her car and maintain insurance on it.

Because neither party had an attorney, the court conducted most of the questioning at the hearing on the petition. It heard from Robert, Kathryn, both children (without the parents present), the manager of the mobile home park

¹ The older child turned eighteen in December 2012.

where Kathryn lives, and Robert's brother. Both parties submitted exhibits. Robert submitted a trial brief.

The district court discussed at length the stipulated agreement memorialized in the dissolution decree. The court explained the decree did not obligate Kathryn to pay any child support. The court told Kathryn she had a moral obligation to support the children and she should work harder to find gainful employment. The court acknowledged Robert's concern about the unfairness of his providing all the support for the children, but noted that was the agreement of the parties memorialized in the dissolution decree. The court stated even if Robert were to prove everything he alleged, it did not amount to a substantial change in circumstances warranting modification of physical care. The court advised the parties to consult attorneys and told Robert if he wanted to modify child support his remedy was to petition the court for modification of support. In this proceeding he sought only a modification of physical placement and any modification in child support based on the change in physical placement. Because the court did not find a material change in circumstances warranting modification of custody, it dismissed the petition.

Our review of modification actions is de novo. Iowa R. App. P. 6.907. We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(g). Child custody provisions of a dissolution decree may be modified "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 is more or less permanent and relates to the welfare of the child.” *In re Marriage of Brown*, 778 N.W.2d 47, 50 (Iowa Ct. App. 2009).

Robert contends the court erred “with a failure to provide due process” and “with a failure to provide for the best interest of the children.” Both claims are based on the alleged failure of the trial court to allow Robert to present his case fully. The evidence does not support a finding “there has been a substantial change in circumstances since the time of the decree *not contemplated by the court when the decree was entered.*” See *id.* (emphasis added). Additional evidence of Kathryn’s failure to provide support for the children or to find work would not change the result. The decree did not order Kathryn to pay any child support, and she has not paid any. We agree with the court’s conclusion a modification of custody was not warranted. The trial court gave the parties a fair hearing. Even if Robert had additional time and proved everything he alleged, it would not amount to a substantial change in circumstances warranting modification of physical care. We find no violation of due process. The best interests of the children are not an independent basis for modification of custody apart from evidence of a substantial change in circumstances not contemplated by the court at the time of the dissolution decree.

AFFIRMED.