

IN THE COURT OF APPEALS OF IOWA

No. 2-238 / 11-1434
Filed April 25, 2012

**IN RE THE MARRIAGE OF KIMBERLY LAIRD
AND JOHN LAIRD**

Upon the Petition of

KIMBERLY LAIRD,
Petitioner-Appellee,

And Concerning

JOHN LAIRD,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

John Laird appeals from the district court order modifying the decree dissolving his marriage to Kimberly Laird. **AFFIRMED.**

David A. Roth of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

John Laird appeals the district court order modifying the decree dissolving his marriage to Kimberly Laird. John argues the district court erred in changing the school district of the parties' child from where the child was enrolled at the time of the decree to where Kimberly recently moved. He further argues the district court erred in not making Kimberly responsible for the portion of the transportation costs associated with the change in school districts. We affirm.

I. Background Facts and Proceedings.

John and Kimberly were married in October 2001, and had one child together, Katelyn, born July 2002. Following a trial, the district court dissolved the parties' marriage by a decree filed January 25, 2008. At the time of the decree, John lived in Waterloo, Kimberly lived in Reinbeck, and Katelyn was attending kindergarten in Reinbeck in the Gladbrook-Reinbeck school district. Under the decree, the district court awarded the parties' joint legal custody and joint physical care of Katelyn. The physical care schedule provided for each parent to have Katelyn on alternating weeks starting and ending Sundays at 4:00 p.m. John was made responsible for transporting Katelyn to and from custody exchanges and school in Reinbeck any time the child was in his care. Roundtrip driving time from John's house to Reinbeck is approximately one hour, while roundtrip driving time to Gladbrook is about one hour and forty minutes.

Since the entry of the dissolution decree, the parties have been able to communicate and co-parent exceptionally well. Katelyn has done well in the shared care placement and in the Gladbrook-Reinbeck school district.

In December 2010, Kimberly became engaged to a man who lived in Ionia. Kimberly moved to Ionia in May 2011 and wed in June 2011. Ionia is in the Nashua-Plainfield school district. By the time Kimberly was engaged, she and John had already had discussions about changing Katelyn's school district, but could not reach a final resolution. Kimberly wanted Katelyn to attend the Nashua-Plainfield school district, while John wanted Katelyn to remain in the Gladbrook-Reinbeck school district. He offered to move to Reinbeck to ensure Katelyn could still enroll. When the parties were unable to agree on a school district, Kimberly petitioned and John cross-petitioned to modify the dissolution decree. The matter came to a trial on August 15, 2011.

At the time of trial, Katelyn was about to enter fourth grade. If Katelyn attends the Nashua-Plainfield school district, she would go to fourth grade in Nashua, fifth through eighth grades in Plainfield, and high school in Nashua. Roundtrip driving time from John's residence in Waterloo to Plainfield would be approximately one hour and fifteen minutes, while roundtrip driving time to Nashua would be approximately one hour and thirty minutes. Kimberly's roundtrip driving time would be about thirty minutes to Nashua, and forty-five minutes for Plainfield. There is a shuttle available to transport students between Nashua and Plainfield.

If Katelyn were enrolled in the Gladbrook-Reinbeck school district, she would attend fourth grade in Reinbeck, grades fifth through eighth in Gladbrook, and high school in Reinbeck. John testified that he would move to Reinbeck resulting in a minimal roundtrip driving time for him. However, Kimberly's

roundtrip driving time would be over two hours and thirty minutes from Ionia to Reinbeck, and over three hours from Ionia to Gladbrook. There is also a shuttle available to transport students to and from Reinbeck and Gladbrook.

On August 16, 2011, the district court entered an order granting Kimberly's petition for modification while denying John's cross-petition. The district court determined that having Katelyn continue to attend the Gladbrook-Reinbeck school district was "unworkable" given the large travel time for Kimberly and Katelyn. The district court also determined it was in Katelyn's best interests to be enrolled in the Nashua-Plainfield school district commencing in the fall of 2011 and thereafter. John appeals.

II. Standard of Review.

We review the modification of the terms of a marriage dissolution decree de novo. *In re Marriage of Johnson*, 781 N.W.2d 553, 554 (Iowa 2010).

III. Analysis.

A. Best Interests of the Child. At the outset, it is important to note that neither party has requested to change the joint physical care arrangement or to modify custodial rights.¹ Both parties agree that the joint care arrangement has worked for over three years; Katelyn has done well in the joint care arrangement,

¹ To the extent John challenges the existence of a material and substantial change in circumstances for modification, we find that he has failed to preserve this argument for appeal. John did not contest the existence of a material and substantial change in circumstances in the district court. To the contrary, John affirmatively alleged in his cross-petition for modification "[t]hat a substantial change in circumstances has occurred relative to [Kimberly's] Petition [for modification], and the move of Kimberly." *See State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court.").

is healthy, happy, and well-adjusted; and except for the issue of schooling, the parties have communicated well and have been able to co-parent effectively. Thus, this is a case where joint custodians are unable to reach a mutual resolution to an issue that they have equal participation in making. See Iowa Code § 598.41(5)(b) (2011) (stating decisions affecting a child's education are one of the rights and responsibilities that joint custodians have equal participation in making).

Our supreme court has explained that “[w]hen joint legal custodians have a genuine disagreement concerning a course of treatment affecting a child’s medical care, the court must step in as an objective arbiter, and decide the dispute by considering what is in the best interest of the child.” *Harder v. Anderson*, 764 N.W.2d 534, 538 (Iowa 2009). That reasoning applies equally to decisions concerning a child’s education. See, e.g., *Lombardo v. Lombardo*, 507 N.W.2d 788, 792 (Mich. Ct. App. 1993) (“[W]here the parents as joint custodians cannot agree on important matters such as education, it is the court’s duty to determine the issue in the best interests of the child.”); *Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. Ct. App. 1989); *In re Kurowski*, 20 A.3d 306, 315 (N.H. 2011); *Levine v. Levine*, 731 A.2d 558, 566 (N.J. Sup. Ct. App. Div. 1999). The statute that defines “joint legal custody” specifies that among the rights and responsibilities of joint legal custodians is the right to equal participation in decisions affecting a “child’s legal status, medical care, education, extracurricular activities, and religious instruction.” Iowa Code § 598.1(3).

Upon our de novo review, we find that Katelyn's best interests are served by having her attend the Nashua-Plainfield school district. No evidence was presented comparing and contrasting the Nashua-Plainfield and Gladbrook-Reinbeck school districts, and the parties did not argue that Katelyn would not receive a similar education and benefits in both school districts. Rather, the evidence at trial and the district court's ruling focused on a comparison of the roundtrip travelling times for both parents to the two school districts before and after Kimberly's move. This evidence shows that having Katelyn attend the Nashua-Plainfield school district keeps the traveling times as similar as possible to the previous traveling times when Kimberly lived in Reinbeck and Katelyn attended the Gladbrook-Reinbeck school district, but keeping Katelyn in the Gladbrook-Reinbeck school district would result in a substantial increase in traveling time for Kimberly and Katelyn.

Prior to Kimberly's move, John was travelling one hour roundtrip to Reinbeck, and would have been traveling an hour and forty minutes roundtrip to Gladbrook. On the other hand, Kimberly had little to no roundtrip traveling time since she resided in Reinbeck.

After Kimberly's move, if Katelyn attends the Nashua-Plainfield school district, Kimberly would have a slight increase in roundtrip traveling time since she would be living in the nearby town of Ionia. However, John's roundtrip travel time would remain relatively unchanged. With roundtrip traveling times to Plainfield of one hour and fifteen minutes and to Nashua of an hour and thirty minutes, John's roundtrip traveling time only increases fifteen minutes when

traveling to the closer of the two towns, but actually decreases ten minutes when traveling to the farther of the two towns. In contrast, if Katelyn attends the Gladbrook-Reinbeck school district (and John moved to Reinbeck), John's roundtrip travel time would be minimal, while Kimberly's travel time with Katelyn would increase to two hours and thirty minutes to Reinbeck and three hours to Gladbrook. Accordingly, having Katelyn remain in the Gladbrook-Reinbeck school district would result in Kimberly having twice as much roundtrip travel time than what John had when he travelled to Reinbeck or would have if he is required to travel to the Nashua-Plainfield school district.

In essence, John seeks a role reversal in travelling, but the role reversal comes at a substantial cost to Katelyn who would have to spend double the amount of time traveling to and from school every other week. We agree with the district court that "[Kimberly] and Katelyn could not be expected to make such a trip on a daily basis while [Kimberly] was exercising her shared placement rights." The increased travel time is not in Katelyn's best interests.

B. Transportation Costs. John also argues that Kimberly should be responsible for a portion of the increased transportation costs associated with her move. However, John did not raise this argument in the district court, nor did he present any evidence to the district court showing how much he would sustain in increased transportation costs compared to what he was spending before. Therefore, we find that he has failed to preserve this argument for appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 567 (Iowa 1999); see also *State v.*

McCright, 569 N.W.2d 605, 607 (Iowa 1997) (“Issues not raised before the district court . . . cannot be raised for the first time on appeal.”).

IV. Conclusion.

Because we find that it is in Katelyn’s best interest to attend the Nashua-Plainfield school district, we affirm the district court’s ruling in this case.

AFFIRMED.