

**IN THE COURT OF APPEALS OF IOWA**

No. 2-810 / 12-0480  
Filed October 17, 2012

**IN RE THE MARRIAGE OF CASSIE E. MONSON  
AND SCOTT A. MONSON**

**Upon the Petition of**

**CASSIE E. MONSON,**  
Petitioner-Appellee,

**And Concerning,**

**SCOTT A. MONSON,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

A father appeals the modification of a divorce decree awarding physical care of his child to the child's mother. **AFFIRMED.**

Andrwe B. Howie of Hudson, Mallaney, Shindler & Associates, P.C., West Des Moines, for appellant.

Roger L. Sutton of Sutton Law Office, Charles City, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

A father appeals the modification of a divorce decree awarding physical care of his child to the child's mother. The father contends it is not in the child's best interests to place physical care with the mother. We affirm.

**I. Background Facts and Proceedings**

Scott and Cassie Monson have one child together, C.M. (born 2007). On May 29, 2009, Scott and Cassie dissolved their marriage. The court incorporated a joint physical and legal custody agreement into the dissolution decree. At the time of dissolution, the parties lived in close proximity to each other: Cassie in Mason City and Scott in Clear Lake.

Under the terms of the joint physical and legal custody agreement, both Scott and Cassie alternated care of C.M. on a weekly basis. The parenting schedule divided time equally between the parties. The parties alternated holidays with C.M. Neither party was obligated to pay child support to the other. The stipulation included the parties' agreement on numerous parenting issues including which daycare C.M. would attend. The parties continued to alternate care throughout the pendency of these proceedings.

On June 25, 2009, Scott was arraigned for operating while intoxicated (OWI), third offense. Scot pleaded guilty on October 20, 2009, to the lesser charge of OWI, second offense. Prior to the dissolution decree, Scott had a long history of driving without a driver's license and driving while suspended. Throughout these proceedings, Scott did not have a driver's license. Despite not

having a driver's license, Scott drove to the courthouse for depositions in these proceedings on at least one occasion.

Since the dissolution decree, Scott married Niki. Niki's two children live with her and Scott. Scott has several employers. He works for Bob's Marine Service as a mechanic and barge operator on Clear Lake during good weather seasons. He also works as a boat captain for Lady of the Lake, Inc. In the off-season, Scott collects unemployment benefits. At various times, Scott works for Shane Monson Construction performing construction or snow removal, for Kelly Wreath Services making Christmas wreaths, and for Marion Olson inspecting rental properties. He also makes and sells lawn ornaments as a self-proprietor. While C.M. was in Scott's care, the parties agreed C.M. would attend daycare in Mason City pursuant to the stipulation agreement. Scott changed daycare providers twice without notifying Cassie or the court of the subsequent change.

On August 1, 2011, Cassie moved to Kasson, Minnesota, to take a job as an emergency dispatcher at Mayo Clinic in Rochester. Cassie works eighty hours biweekly from 4:30 p.m. to 2:30 a.m. She and C.M. live in her brother's home. They share the home with three other people—her brother, his fiancé, and Cassie's niece. On the days she works, Cassie takes C.M. to daycare at 3:30 p.m. Her brother then picks C.M. up from daycare at 5:00 p.m. Cassie and Scott meet in Austin, Minnesota, to exchange care of C.M. each week. At the time of these proceedings, C.M. was enrolled in a preschool program entitled the Kasson-Mantorville Comets. C.M. will begin kindergarten in September 2013.

On January 5, 2012, a doctor in Clear Lake diagnosed C.M. with bronchitis, a sinus infection, and an ear infection. The doctor also indicated C.M. was predisposed to asthma. Cassie voiced concerns to Scott about Scott and Niki's smoking habits. Since the time of the dissolution decree, Cassie testified she had taken C.M. to approximately twenty doctor appointments. Scott attended less than half of those appointments.

After three days of trial, the district court filed its written ruling. The court noted,

[W]hat an incredibly close decision these circumstances present. Both parties are appropriate and devoted parents . . . . Cassie and Scott are equally suited for physical care in many ways: Both surround [C.M.] with dedicated and affectionate family members and friends, yet neither delegate primary parenting obligations. Neither party is financially stable. Scott has experienced a number of alcohol and criminal/traffic difficulties, but no evidence demonstrates that he cares for [C.M.] under the influence of alcohol. Cassie has experienced job changes, Scott has made residential changes.

Although the court was "greatly influenced by determinations of credibility," it found neither party to be a particularly reliable reporter. Nonetheless, the court concluded it was,

[E]specially troubled by Scott's testimony. He was consistently careless with details. He explained or minimized in a manner out of proportion with the importance or materiality of the issue. His body language and facial expressions were those of a person trying very hard to *appear* honest and persuasive, but [the court] did not find him to be genuine. And although he denies a temper and claims to be easy-going, he was notably "tightly-wound" when challenged during cross-examination. On the whole, [the court] trust[ed] his version of the events and circumstances less than that of Cassie.

On February 9, 2012, the court entered an order granting Cassie physical care of C.M. The court reasoned,

It appears to this court that [C.M.'s] long-term best interests—if he must be in the primary care of only one party—are better served by Cassie exercising physical care. First, Cassie is more vigilant about [C.M.'s] health requirements. No smoking occurs in her household, and she has been more involved with [C.M.'s] medical appointments. Scott has diffuse obligations and recreational interests, while Cassie is more focused on [C.M.]. Finally, [the court is] bothered by Scott's arbitrary changing of day care providers against the wishes of Cassie and without seeking authority of the court.

The court-ordered parenting schedule granted Scott parenting time every other weekend, six weeks during C.M.'s summer break from school, alternating holidays, and other designated special occasions. The court also ordered Scott to pay child support, directed the parties to share medical expenses, and granted Cassie the right to claim [C.M.] as a dependent for income tax purposes. Scott appeals the court's decision to place physical care of C.M. with Cassie.

## **II. Standard of Review**

We review an action to modify a dissolution decree de novo. Iowa R. App. P. 6.907; *In re Marriage of Brown*, 778 N.W.2d 47, 50 (Iowa Ct. App. 2009). Although we give deference to the district court's factual findings, especially in determining the credibility of witnesses, those determinations are not binding upon us. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Zabecki*, 389 N.W.2d 369, 398 (Iowa 1986).

## **III. Modification of Physical Care**

Scott argues the district court erred in modifying the divorce decree to place physical care with Cassie upon her move to Minnesota. To modify a custodial provision of a dissolution decree, the petitioning party first has the burden to show conditions “have so materially and substantially changed that the

children's best interest make it expedient to make the requested change." *In re Marriage of Frederici*, 338 N.W.3d 156, 158 (Iowa 1983). Second, the petitioning parent seeking to change the physical care from the primary custodial parent must carry the "heavy burden" of demonstrating the "ability to offer superior care." *Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002); *Frederici*, 338 N.W.3d at 158 ("[O]nce custody of the children has been fixed it should be disturbed only for the most cogent reasons."). Where parents share physical custody, however, we place a lower burden of proof on the petitioning parent because equal physical and primary custody is predicated upon a finding either party is a suitable primary care parent. *Melchiori*, 644 N.W.2d at 368–69. The party seeking modification of joint physical care bears the same burden as in an initial custody determination; the question is which parent can render "better" care. *Id.* at 369.

Here, the parties stipulated to a finding of a material and substantial change in circumstances upon Cassie's move to Minnesota. Thus, the question on review is whether Cassie carried the burden of demonstrating she can render better care than Scott. *See id.* at 368.

Scott argues the district court erred in placing physical care with Cassie because such placement is not in C.M.'s best interests. To determine which parent serves the child's best interests, we consider which party can provide "an environment most likely to bring the child to healthy physical, mental, and social maturity." *In re Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996).

Scott and Cassie are the primary sources for reports on the stability of their home lives and their ability to contribute to C.M.'s physical, mental, and social maturity. The district court was in a unique position to observe the parties' testimony and demeanor during these proceedings. We give deference to the district court's thoughtful and specific findings that Cassie was a more credible witness than Scott. See Iowa R. App. P. 6.904(3)(g). Although Cassie's current work schedule is not ideal, Cassie is responsive to C.M.'s health requirements. Her primary focus is on providing care for C.M. Scott has a diverse set of employment responsibilities across a number of employers. Scott's recent OWI charge limits his ability to provide transportation for C.M.

While both parties love and care for C.M., we find C.M.'s best interests are served with Cassie exercising physical care. Accordingly, we affirm the district court's decision.

**AFFIRMED.**