

IN THE COURT OF APPEALS OF IOWA

No. 6-880 / 06-0989
Filed December 28, 2006

**IN RE THE MARRIAGE OF JESSICA R. DEVOS
AND AARON S. DEVOS**

**Upon the Petition of
JESSICA R. DEVOS,**
Petitioner-Appellant,

**And Concerning
AARON S. DEVOS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Cherokee County, Nancy L.
Whittenburg, Judge.

Petitioner appeals from a district court ruling modifying the terms of a
dissolution decree. **AFFIRMED.**

Andrea Van Beek, Orange City, for appellant.

Mary C. Hamilton of Hamilton Law Firm, P.C., Storm Lake, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Jessica and Aaron DeVos are the parents of two children: Breeana, born in April 1997, and Maxwell (Max), born in October 1998. The parties' marriage was dissolved by decree entered in February 2002. The decree awarded the parties joint custody and joint physical care of the two children.

In July 2005 Jessica sought modification of the decree to award her primary physical care. Aaron filed an answer and counterclaim, seeking primary physical care. Following a hearing, the district court entered an order modifying the decree by awarding primary physical care to Aaron with liberal visitation rights to Jessica. The court further ordered Jessica to pay child support.¹ Jessica appeals.

Our review is de novo. Iowa R. App. P. 6.4. We are not bound by the district court's findings of fact, but we give them deference because the district court had an opportunity to view firsthand the demeanor of the parties and evaluate them as custodians. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998); see also Iowa R. App. P. 6.14(6)(g).

Modification of the custodial terms of a dissolution decree is appropriate "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." *Walton*, 577 N.W.2d at 870. The change must be more or less permanent and relate to the welfare of the children. *Id.* The parent seeking modification of

¹ The court's rulings concerning tax exemptions and uncovered medical expenses are not at issue on appeal.

physical care must show an ability to administer more effectively to the children's needs. *In re Marriage of Grantham*, 698 N.W.2d 140, 146 (Iowa 2005).

We agree with the district court's conclusion that there has been a substantial change in circumstances in this case. At the time of the modification hearing in March 2006, Jessica planned to remarry and relocate to rural Archer, Iowa, approximately thirty miles from Cherokee, where Aaron lives and the children have been attending daycare and school. In anticipation of her remarriage and relocation, Jessica had changed employers and was no longer working in Cherokee. In addition, testimony at the hearing revealed a steady deterioration in the parties' ability to communicate with one another about the children since entry of the decree. Jessica's relocation, combined with the parties' inability to cooperate and communicate in dealing with their children, warrant a modification. *See Walton*, 577 N.W.2d at 870.

It is clear from the record both parents love their children and are good parents. Upon our de novo review, giving the appropriate deference to the district court's assessment of credibility, we agree with the district court that Aaron is the parent who can administer most effectively to the long-term best interests of the children and place them in an environment that will foster healthy physical and emotional lives. *Id.* at 871. The district court found Aaron "has played a more active role in facilitating the children's school education, religious education, and involvement in extracurricular activities. Aaron's focus has been directed more to the children's growth and development than Jessica's." The court also found Aaron had shown a greater willingness to discuss with Jessica important decisions concerning the children and promote the children's

relationship with her. The record supports these findings. Accordingly, we affirm in all respects the district court's ruling modifying the dissolution decree.

AFFIRMED.