

**IN THE COURT OF APPEALS OF IOWA**

No. 6-973 / 06-0802  
Filed January 18, 2007

**AMY M. RODGERS,**  
Petitioner-Appellant,

**vs.**

**JEFFERY S. CLARK,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Petitioner appeals the district court's denial of her application to modify  
certain provisions of the parties' paternity decree. **AFFIRMED AS MODIFIED.**

Dennis D. Jasper, Bettendorf, for appellant.

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for  
appellee.

Considered by Mahan, P.J., and Miller, J., and Brown, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**BROWN, S.J.****I. Background Facts & Proceedings**

Amy Rodgers and Jeffery Clark were never married, but they lived together for several years in Maine. Amy and Jeffery are the parents of two children, Nathaniel, born in 1999, and Nicholas, born in 2000. In 2002, the parties separated and Amy planned to move to Iowa. A paternity decree was entered in Maine on October 11, 2002, which incorporated the parties' stipulation to joint legal custody, with Amy having primary physical care. The parties agreed Amy should have the right to make all religious decisions, and Jeffery should have the right to make all decisions about non-emergency medical care. The stipulation and decree further stated, "In no event shall Mother have the right to consent to the immunization of the children."

Amy and the children moved to Iowa. In November 2004, Amy filed an application for modification, seeking sole legal custody of the children, an increase in Jeffery's child support obligation, and a specific visitation schedule. Amy had come to regret signing the stipulation that the children would not be immunized and requested that provision be cancelled. Under Iowa Code section 138A.8 (2003), all school children are to be immunized, with two limited exceptions.<sup>1</sup> Jeffery signed affidavits stating he objected to immunization based on his religious beliefs. The parents had conflicts in other areas as well, with Jeffery sometimes subjecting Amy to demeaning or derogatory comments.

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<sup>1</sup> Iowa Code section 139A.8(4)(a) provides an exception if a physician finds the immunization would be injurious to the child's health. There is an exception in section 139A.8(4)(b), which states a child's parent may submit an affidavit "stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the applicant is an adherent or member."

The stipulation provided, "Upon the children attaining school age Father shall have the children each summer vacation from one week after school ends until one week prior to it commencing in the fall." Amy has one week of visitation with the children during Jeffery's summer visitation. Although the children had visited with Jeffery in Maine on other occasions, 2005 was the first year the children had visitation with Jeffery there for most of the summer. The children told Amy the summer visitation was too long and they missed her.

Amy took the children to a psychologist, Dr. Richard Hutchison. The children also told Dr. Hutchison they were upset by the long summer visitation. Dr. Hutchison recommended that Amy have two weeks with the children in the middle of Jeffery's summer visitation as a way to help the children. He also found that the conflict between Amy and Jeffery was fairly intense, and the children felt caught in the middle. Dr. Hutchison recommended that Amy have sole legal custody of the children.

A modification hearing was held in February 2006. The district court found, "The evidence unquestionably shows that the parties have continuing difficulties in communication and are engaged in ongoing conflict concerning the children." The court determined, however, that Amy had not shown a material and substantial change in circumstances that would warrant a modification of the custody order. The court concluded both parents should do better to "communicate with each other in a more appropriate fashion and work together to place the children's interests before their own."

The court also declined to modify the parties' visitation schedule, stating "No evidence has been presented establishing any long-term impact on the children from last summer's first expanded and extended visitation with the respondent." The court increased Jeffery's child support obligation. Jeffery was ordered to pay \$1000 toward Amy's attorney fees.

Both parties filed motions pursuant to Iowa Rule of Civil Procedure 1.904(2). The court clarified that Jeffery was not permitted a credit on his child support obligation for travel expenses, as he had been in the past. In all other respects the court denied the motions. Amy appeals.

## **II. Standard of Review**

In this equitable action, our review is de novo. Iowa R. App. P. 6.4. In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the district court, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

## **III. Sole Custody**

Amy contends the district court should have modified the paternity decree to grant her sole legal custody of the children. Amy believes there has been a substantial change in circumstances because the conflict between the parties had intensified. She states that if she had sole legal custody this would eliminate the arguments and conflicts between the parents. Amy recognizes that these conflicts are detrimental to the children. She points out that Dr. Hutchinson testified she should have sole legal custody.

A party seeking modification of a dissolution decree must establish there has been a substantial change in circumstances since the entry of the decree. *In re Marriage of Maher*, 596 N.W.2d 561, 564-65 (Iowa 1999). A party must show that the changed conditions affect the welfare of the children and make it expedient to make the requested change in custody. *In re Marriage of Winnike*, 497 N.W.2d 170, 173 (Iowa Ct. App. 1992). The changed circumstances must not have been within the contemplation of the court at the time of the original decree. *Maher*, 596 N.W.2d at 565. In addition, a party seeking a change in custody must show the ability to minister more effectively to the children's well being. *In re Marriage of Wedemeyer*, 475 N.W.2d 657, 659 (Iowa Ct. App. 1991). The same legal principles are employed whether parents have been married or remained unwed. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988)

"The legislature and judiciary of this State have adopted a strong policy in favor of joint custody from which courts should deviate only under the most compelling circumstances." *Winnike*, 497 N.W.2d at 173. We agree with the district court that Amy has not presented evidence of compelling circumstances such that the decree should be modified to award sole legal custody to her. The supreme court has noted:

Although cooperation and communication are essential in joint custody, tension between the parents is not alone sufficient to demonstrate it will not work. . . .

Even though the parents are not required to be friends, they owe it to the child to maintain an attitude of civility, act decently toward one another, and communicate openly with each other. One might well question the suitability as custodian of any parent unable to meet these minimum requirements. Problems are likely to develop under any custodial arrangement. The adults must have the maturity to put their personal antagonisms aside and attempt to

resolve the problems. The existence of problems does not in itself justify a change in custody.

*In re Marriage of Bolin*, 336 N.W.2d 441, 446-47 (Iowa 1983).

We affirm the district court's decision to deny Amy's request to modify the paternity decree to grant her sole legal custody.

#### **IV. Immunizations**

Amy asks to have the paternity decree modified to permit her to have the children immunized. Jeffery opposes this now, as he did when the decree was entered. The district court, although disagreeing with Jeffery's position in this regard, did not change the provision. Amy claims Jeffery does not actually have any religious beliefs that prohibit immunization, and that he improperly signed the exemption cards in Iowa.

Amy signed the stipulation which stated, "In no event shall Mother have the right to consent to the immunization of the children." The stipulation was incorporated into the Maine paternity decree. We must seriously question the continuing validity of that provision in Iowa, where it is clearly against the law, and against public policy. See Iowa Code § 139A.8(1) (providing parents must have minor children immunized against certain diseases); *Huyser v. Iowa Dist. Court*, 449 N.W.2d 1, 3 (Iowa 1993) (noting agreements to waive child support are against public policy and are ineffective); *In re Marriage of Sundholm*, 448 N.W.2d 688, 690 (Iowa Ct. App. 1993) (same); see also *Helton v. Crawley*, 241 Iowa 296, 328-29, 41 N.W.2d 60, 78 (1950) (stating foreign adoption decree entitled to comity to the extent it is not contrary to Iowa's public policy)

Our supreme court has previously noted the importance of immunizations:

Whatever the benefits of nonconventional or “natural” medicine, however, immunizations have a proven record. The fears of our parents caused by childhood diseases such as poliomyelitis are unknown to modern couples because of immunization programs. We find it significant in his favor that James insisted upon immunizing Laural even over Sarah’s wishes.

*Lambert*, 418 N.W.2d at 43. We modify the decree to eliminate the provision that Amy could not consent to immunizations as it is clearly against the public policy of Iowa.

We turn then to the other provisions of the paternity decree bearing on the immunization issue. Under the decree, Amy has the ability to make all religious decisions regarding the children, while Jeffery has the responsibility for all non-emergency medical care decisions. Jeffery states that immunizations are a non-emergency medical care decision, and he had the right to sign the exemption cards for the children. Amy points out that the only available exemption for the children is based on religion, where she should have the ability to make the decisions.

In Iowa, if the exemption in section 139A.8(4)(a) does not apply, as it does not here, then there is no medical decision to be made as to whether children should be immunized.<sup>2</sup> The legislature has taken that decision away from parents, and determined all children “enrolled in any licensed care center or elementary or secondary school in Iowa” must be immunized against certain specific diseases. Iowa Code § 139A.8(2)(a). Jeffery does not have the ability to

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<sup>2</sup> Section 139A.8(4)(a) applies only if a physician has given the opinion that immunizations would be injurious to the child or a member of the child’s family.

state, as a medical matter, that he does not agree with immunizations. See Iowa Code § 139A.8(1) (providing parents shall assure that minor children residing in the state are immunized).

The only available exemption to the children in this case is found in section 139A.8(4)(b), which provides a parent may sign a statement “stating that the immunization conflicts with the tenants and practices of a recognized religious denomination of which the applicant is an adherent or member.”<sup>3</sup> This exemption is available to parents based on religious beliefs. Under the terms of the decree, Amy has the right and responsibility for all religious decisions. Therefore, the parties agreed and the decree provides only Amy can determine whether the religious exemption for immunizations should apply. As the parties have stipulated, we leave this matter to her discretion.

#### **V. Visitation**

Amy seeks a modification of the visitation provision of the paternity decree. She points out that Dr. Hutchison testified it would be beneficial to the children to have two weeks with her in the summer to break up the long period of time they spend with Jeffery in Maine. She states the children have developed anxiety and loneliness from being away from her for too long.

Generally, a much less extensive change of circumstances needs to be shown to modify a visitation schedule than a custody provision. *In re Marriage of Jerome*, 378 N.W.2d 302, 305 (Iowa Ct. App. 1985). Even under this reduced standard, however, we find Amy has not shown a sufficient change in

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<sup>3</sup> Although the evidence at trial strongly suggests Jeffery’s affidavits asserting a religious objection to immunization were not in good faith, we need not and do not decide that issue.



circumstances to justify modifying the visitation schedule. As the children get older they should more readily adjust to spending summers with Jeffery in Maine. Amy already has the children for one week during this time, and the ability to telephone the children.

We affirm the decision of the district court, except that we have eliminated the provision that Amy cannot consent to immunization of the children, as this provision is against public policy. Costs of this appeal are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**