

IN THE COURT OF APPEALS OF IOWA

No. 7-112 / 06-1421
Filed May 23, 2007

**IN RE THE MARRIAGE OF RENATE CAROLINE CORMAN AND DOUGLAS
MICHAEL CORMAN**

**Upon the Petition of
RENAME CAROLINE CORMAN N/K/A ARMSTRONG,**
Petitioner/Appellant,

**And Concerning
DOUGLAS MICHAEL CORMAN,**
Respondent/Appellee.

Appeal from the Iowa District Court for Van Buren County, Daniel P.
Wilson, Judge.

Renate Caroline Corman n/k/a Armstrong appeals the district court's order granting Douglas Corman's petition for modification to transfer physical care of the parties' three minor children from her to Douglas. **AFFIRMED.**

Victoria Siegel of Siegel Law Office, Ottumwa, for appellant.

J. Bryan Schulte of Schulte, Hahn, Swanson, Engler & Gordon Law
Offices, Burlington, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Renate Caroline Corman, n/k/a/ Armstrong, (Carrie) appeals the district court's ruling granting Douglas Corman's (Douglas) petition for modification to transfer physical care of the parties' three minor children from her to Douglas. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

The marriage between Carrie and Douglas was dissolved March 29, 2002 pursuant to a decree filed that day. At that time the parties had four minor children, Brandon, born December 13, 1985, Cody, born May 4, 1990, Zachary, born February 23, 1994, and Brock, born March 11, 1998. The court granted the parties joint legal custody and placed physical care of the children with Carrie, giving liberal visitation to Douglas. Douglas was ordered to pay Carrie child support for the children. At the time of the dissolution the parties lived nine miles apart and although both subsequently changed residences several times they continued to live in the general area of southeast Iowa until Carrie moved to Arizona in January 2006.

On January 10, 2006, Douglas filed a petition for modification seeking physical care of the parties' three minor children¹ or, in the alternative, a reduction of his child support. He argued there had been a substantial change in circumstances due both to Carrie's stated intent to move to Arizona and his reduction in income due his job-related injury.

¹ By the time of the modification hearing Brandon was an adult and thus his custody and physical care were not at issue in the modification action.

At the time of the modification hearing Douglas was thirty-seven years old. He married Kelli in August 2005, and was living in Burlington with her, her son, and the parties' oldest son, Brandon. Kelli and Douglas had been living together since May 2004, and both characterized their marriage as very stable. They are planning to reside where they are for the foreseeable future. In addition, at the time of the August 2006 hearing Douglas's other three boys had been staying with him since June 2006.

At the time of the hearing Douglas was a mixer/driver for a concrete company where he earned \$11.54 per hour and averaged forty-seven hours per week. He sustained what he characterized as a work-related injury in August 2005 which required back surgery. He missed a substantial amount of work due to the injury, surgery, and recovery time. Due to the loss of income which resulted, Douglas did not pay child support from approximately the time of the injury until January 2006. However, the district court found at the time of the hearing that Douglas was able to work and otherwise in good health. Douglas has extended family in the southeast Iowa area.

Carrie was thirty-nine years old at the time of the hearing and had not remarried. She was working as a registered nurse at an all-girls' academy in Arizona earning \$46,000 per year. Carrie testified she moved to Arizona to get a better job with more pay and benefits in the specific nursing field in which she wanted to work. She also testified, however, that she and the three youngest children selected Arizona by taking a map, closing their eyes, pointing their fingers at the map and landing on Arizona, and deciding to move there as a

“great adventure.” Carrie did not file a petition seeking modification of the custody or visitation provisions of the parties’ dissolution decree before she moved.

Zachery and Brock moved to Arizona with Carrie. Cody wanted to finish the wrestling season in Iowa so Carrie allowed him remain with Brandon at her Iowa residence to finish out the season. At the end of the season Brandon took Cody to Arizona to live with Carrie. The court found that Carrie appeared to be in good health. It appears Carrie has no relatives or extended family in either Arizona or Iowa. She testified that she does not intend to remain in Arizona for the long term and eventually wants to return to Iowa to buy a little farm.

Douglas testified he did not find out Carrie was moving to Arizona until approximately two weeks before she left with the children and she did not ask him about it or make arrangements with regard to his contact or visitation with the children, she simply informed him they were moving. He also stated that Zachery did not want to move but instead wanted to remain in Iowa with Douglas, and Carrie had agreed to that but then immediately before her move she changed her mind and forced Zachery to go with her. Douglas testified Carrie did not provide him with an Arizona address or phone number for several weeks, did not tell him where the children were attending school, did not inform their school of his name and address, did not arrange visitation with Douglas during the children’s school breaks, and did not contact him when they did return to Iowa so he could see the children. He claimed she actively attempted to undermine his relationship with the children by not allowing them to speak to him

unless she was present. Douglas did not see the children between Carrie's move in January 2006 and his summer visitation in June 2006.

Carrie disputed most of this testimony by Douglas. She testified she told him of her plans to move to Arizona in October 2005, not two weeks before she left. She also testified she did try to discuss with him how visitation would work when she moved and tried to make efforts to accommodate his continued visitations after they moved. Carrie stated she did give Douglas her address and phone number in Arizona before she left Iowa and did not in any way restrict the children's contact with him.

The court interviewed Cody, Zachery, and Brock outside the presence of the parties. At that time Cody expressed a desire to live with Douglas, in part due to the fact he was concerned if he was placed with Carrie he would have to take the role of "guardian" of his younger brothers much like Brandon had to do when he lived with them. Zachery and Brock both expressed a desire to live with Carrie. Zachery stated Douglas goes to the bars and drinks a lot, has guns and knives in the home, and that he, Zachery, does not get along with his stepmother Kelli. Brock stated he has lots of friends and "stuff," as well as several pets, in Arizona. The district court placed little weight on Zachery's testimony, finding his desires concerning physical care were "very much subject to being influenced by others" and it appeared he had been coached by Carrie concerning what to say regarding physical care. The court appears to have similarly discounted Brock's testimony, finding he had also been coached by Carrie.

The record shows that during their time in Arizona, Cody's and Zachery's grades both declined fairly dramatically. Zachery also began to exhibit behavioral problems in school causing Carrie to remove him from school for the last five weeks of the school year. The move did not seem to affect Brock as much as it did the other two boys, and he appeared to be doing fairly well in school and otherwise in Arizona.

In its August 4, 2006 ruling the district court found Carrie's move had affected Douglas's visitation and her decision to move to Arizona "to seek an adventure" did not reflect well on her parenting judgment. The court also determined Douglas's residential and geographic status was more stable than Carrie's because while she testified she intended to move back to Iowa at some point his residence was not likely to change and he had a stable marriage with Kelli. In addition, it concluded that Douglas's evidence should be given more weight than Carrie's because he was the more credible party. The court found Carrie's credibility to be in doubt because she had previously lied under oath.

Thus, although the court found that both parties loved their children and were capable of raising them, it concluded Douglas could render superior care to the children at this time and it would be in the children's short-term and long-term best interest for their physical care to be transferred from Carrie to Douglas. The court concluded the parties should retain joint legal custody of the children and granted Carrie liberal visitation with the children. The also court ordered Carrie to pay child support to Douglas and that each party should be responsible for their own attorney fees.

Carrie appeals, contending the district court erred in transferring physical care of the children to Douglas.

II. SCOPE AND STANDARDS OF REVIEW.

This action for modification of a dissolution of marriage decree is an equity case. See Iowa Code §598.3 (2005) (“An action for dissolution of marriage shall be by equitable proceedings”); *Id.* §598.21C (Supp. 2005) (providing for modification of orders for disposition and support when there is a substantial change in circumstances). Our review is thus de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Prior cases have little precedential value on custodial issues, and courts must make their decisions on the particular circumstances unique to each case. *In re Marriage of Rierson*, 537 N.W.2d 806, 807 (Iowa Ct. App. 1995).

III. MERITS.

The legal principles governing modification actions are well established.

To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A

parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed for only the most cogent reasons.

In re Petition of Anderson, 530 N.W.2d 741, 741-42 (Iowa Ct. App. 1995) (quoting *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983)).

Here, unlike in an original custody determination, the question is not which home is better, but whether the parent seeking the change has demonstrated he or she can offer the children superior care. *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 213 (Iowa Ct. App. 1994). Children's preference of where to live is given some weight, but less weight in a modification than in an original custodial determination. *In re Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa Ct. App. 1998).

The court may consider the relocation of the child's residence to more than one hundred and fifty miles from his or her current residence a substantial change in circumstances for purposes of modification of physical care. Iowa Code §598.21D. We conclude that moving the children to Arizona, clearly more than one hundred and fifty miles from where they were residing in Iowa, was a significant and material change in circumstances. However, in order to warrant a modification of physical care Douglas must prove that the change relates to the children's welfare and that he is better able to minister to their well-being.

As joint custodian Douglas had the right to continuing physical and emotional contact with the children and was entitled to share the rights and responsibilities of raising them including, but not limited to, equal participation in

decisions affecting the children's medical care, education, extracurricular activities, and religious instruction. See Iowa Code §598.41(5). Carrie's unilateral and perhaps impulsive decision to move with the children to Arizona without any meaningful consultation with Douglas was made without regard to Douglas's rights as a custodial parent. "A decision by a joint custodial parent with physical care of children to move out-of-state is obviously the kind of decision the other joint custodian has a right to be consulted about." *In re Marriage of Frederici*, 338 N.W.2d 156, 159 (Iowa 1983). In addition, because the move was for such a great distance it clearly had an impact on Douglas's legal custodial rights to continuing physical and emotional contact with the children, and to equal participation in making general decisions regarding the children's upbringing. He did not have contact with Zachery or Brock for approximately five months after the move. In addition, the move also cut the children off from contact with their oldest brother and Douglas's other extended family in the southeast Iowa area.

Furthermore, a change in residence involving a substantial distance by the primary caretaker may justify a change in physical care if the reasons for the move and the quality of the new environment do not outweigh the adverse impact of the move on the children. *Dale v. Pearson*, 555 N.W.2d 243, 245-46 (Iowa Ct. App. 1996). Here, the evidence shows that, at least for Cody and Zachery, the move had an adverse affect on them, educationally, behaviorally, and emotionally. Thus, even if some of Carrie's stated reasons for moving, more

income and better benefits, are believed they do not outweigh the disruptive and adverse impact the move had on the children.

Finally, we agree with the district court that Douglas has greater residential and geographic stability than Carrie. Douglas has a stable marriage and residence in southeast Iowa with no plans to move in the foreseeable future. In addition, he has a large number of extended family members in the area. On the other hand, Carrie appears to be uncertain about where she will be in the future. She stated she does not want to stay in Arizona long term and that she wants to move back to Iowa at some point. Furthermore, according to Cody's discussion with the court Carrie has changed her mind various times about whether she wants to stay in Arizona or move back to Iowa and has at times also talked about going into the Army in order to "travel[] everywhere." Finally, and unlike Douglas, Carrie does not have extended family in Arizona or Iowa who might prompt her to stay in either of those two locations.

We conclude Douglas has proved Carrie's move to Arizona was a substantial change in circumstances that related to the children's welfare and in fact affected their welfare in a negative way. We further conclude, for the reasons stated by the district court and incompletely summarized here, that Douglas met his heavy burden to prove that at this point in time he is better able to minister to the children's well-being and render superior care to the children. We agree with the court that it is in the children's short-term and long-term best interests to transfer their physical care from Carrie to Douglas. The court was

correct in granting Douglas's petition for modification of the physical care provisions of the parties' dissolution decree.

AFFIRMED.