

IN THE COURT OF APPEALS OF IOWA

No. 8-116 / 06-2100
Filed May 14, 2008

PATRICK R. WHITE,
Petitioner-Appellee,

vs.

ANDREA SANDERMAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson,
Judge.

Respondent appeals from the district court's order transferring physical
care of the parties' minor child to the petitioner. **AFFIRMED.**

Joseph Bertogli, Des Moines, for appellant.

Stacey Warren of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines,
for appellee.

Heard by Vogel, P.J., and Zimmer and Baker, JJ.

VOGEL, P.J.

Andrea Sanderman appeals from the district court's order granting Patrick White's petition to modify custody and physical care of their son, Michael. On appeal, Andrea asserts that the district court erred in finding Patrick demonstrated he could render superior care. Because we agree with the district court that there has been a material and substantial change of circumstances, and that it is in the best interests of Michael that he be in the physical care of Patrick, we affirm.

I. Background Facts and Proceedings

Andrea and Patrick were never married, but they are the parents of Michael, who was born in July 1997. Shortly after Michael's birth, an administrative paternity order established Patrick as the father of Michael and ordered Patrick to pay child support. A December 1998 district court order granted joint legal custody to Andrea and Patrick, physical care to Andrea, and liberal visitation to Patrick.

When Michael was nine months old, Andrea reported that he began shaking and his lips turned blue. She sought medical treatment and was referred to a pediatric neurologist who diagnosed Michael with a seizure disorder and prescribed medication. In July 1999, pediatric neurologist Dr. Young P. Oliver began treating Michael. Michael was prescribed multiple medications; however, Andrea reported that Michael continued to have frequent seizures. In 2005, Michael was referred to the Minnesota Epilepsy Group for further testing because Andrea reported reoccurring seizures, uncontrolled by medication.

At the Minnesota Epilepsy Group, Michael underwent electroencephalogram (EEG) and video monitoring. Due to the frequency of the seizures Andrea reported, doctors expected that they would be able to capture a seizure event in a short period of time. However, after two short hospitalizations in March 2005 for two days and May 2005 for six days, Michael did not have any seizure events. Immediately upon Michael's discharge from the hospital, Andrea reported that he had multiple seizures. Michael was again hospitalized at the Minnesota facility in May 2005 for over two weeks but again did not have any seizures while being monitored. In November 2005, Andrea returned Michael to Dr. Oliver as she reported that Michael had multiple seizures over the last couple of months.

In February 2006, Michael returned to the Minnesota Epilepsy Group for approximately two weeks. This time he was taken off the anticonvulsive medications and was monitored, yet doctors were unable to detect anything abnormal. While Michael was in the hospital, Andrea phoned Dr. Oliver and reported that Michael was having seizures while at the Minnesota Epilepsy Group and requested Dr. Oliver put Michael back on the anticonvulsant medications. Dr. Oliver then spoke to the doctors at the Minnesota Epilepsy Group and was informed that Michael had not had any seizures during his hospitalization. Michael was discharged with a report that stated "there is currently no evidence that Michael is at risk for seizures." The doctors concluded that after closely monitoring Michael for a total of more than six weeks without any clinical events on the EEG, it would be wrong and potentially dangerous for Michael to continue to take anticonvulsant medications. Dr. Michael D. Frost,

pediatric neurologist at the Minnesota Epilepsy Group even opined the anticonvulsant medications were responsible for the “spells” that Andrea had reported. However, the day after being discharged, Andrea reported another seizure and sought out further medical care at Blank Children’s Hospital emergency room. The next weekend, she reported a cluster of seizures and received prescription medication from an “on call” doctor at the Children’s Hospital in Omaha, Nebraska, unfamiliar with Michael’s medical history.

During Michael’s February hospitalization, a social worker at the Minnesota Epilepsy Group, Diane Hron, contacted Patrick and informed him that they had concerns that Andrea would do something to Michael to induce a seizure. The Minnesota Epilepsy Group also contacted the Iowa Department of Human Services (DHS), which then began investigating the detailed concerns. The investigation by DHS resulted in a founded report of child abuse for “denial of critical care, gross failure to meet emotional needs” naming Andrea as the person responsible for the abuse.

In March 2006, after Patrick was informed that the symptoms Andrea reported were not indicative of a medical condition, he filed a motion requesting that he be granted physical care of Michael. After a hearing on the matter, the district court granted Patrick’s application and transferred physical care of Michael to Patrick. Andrea appeals from this order.

II. Standard of Review

We review custody orders de novo. Iowa R. App. P. 6.4; *See Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988) (stating that the legal analysis used to resolve custody issues are the same regardless if the child’s parents were

unmarried or the parents' marriage was dissolved). We give considerable weight to the factual findings of the district court, especially when considering the credibility of witnesses as the district court had the benefit of hearing and observing the parties and witnesses first-hand. Iowa R. App. P. 6.14(6)(g). Our overriding consideration is the best interests of the child. Iowa R. App. P. 6.14(6)(o).

III. Physical Care

A party who seeks a modification of a custody order must establish by a preponderance of the evidence that there has been a material and substantial change in circumstances since the entry of the district court order establishing custody. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). Additionally, the party seeking a change in custody must prove an ability to render superior care. *Id.* This heavy burden “stems from the principle that once custody of a child has been fixed it should be disturbed only for the most cogent reasons.” *Id.*

We agree with the district court that Patrick has met this heavy burden. As the district court found, Andrea was overly concerned about Michael's health and testified she continued to disagree with the many medical diagnoses offered into the record. After the doctors at the Minnesota Epilepsy Group determined that Michael did not have a seizure disorder, Andrea continued to seek medical treatment and medication for his alleged seizure disorder multiple times. A report dated February 21, 2006 from the Minnesota Epilepsy Group indicated a future risk for Michael was that a doctor who is not familiar with Michael's medical history and extensive testing, may unwittingly prescribe anticonvulsant

medication to treat seizures that Andrea would continue to report. This is exactly what happened when Andrea, upon return from Minnesota, took Michael to the emergency room, insisting he had experienced seizures, and sought out medical care until she found an on-call doctor to prescribe anticonvulsant medication for him. Taking unnecessary anticonvulsant medication, according to the Minnesota report, places Michael at a significant risk of physical harm as it may cause respiratory suppression and the need for mechanical ventilation. Yet, Andrea continued to insist, even at trial, that Michael does have a seizure disorder. She maintains this position in spite of the uncontroverted medical professionals' opinions to the contrary¹.

Andrea has also alleged that Michael suffered from numerous other conditions. A February 2006 report from the doctors at the Minnesota Epilepsy Group stated:

Over the past year, Ms. Sanderman has made multiple complaints about behavioral and emotional functioning that changes when each concern is ruled out by a professional. Specifically, Ms. Sanderman's concerns about disruptive sleep patterns, weight loss/loss of appetite, depression, learning disabilities and oppositional defiant disorder have not been substantiated in environments where she is not present.

Then, when it appeared she had no doctor to support her allegations of Michael's alleged seizures, Andrea switched her focus to allege Michael suffers from ADHD and bipolar disorder. While all of Andrea's efforts to have Michael diagnosed with some ailment was ongoing, she managed to keep Patrick in the dark. Patrick testified that she gave him little or no notice of doctor's appointments and insisted the doctors would only allow one parent to attend the

¹ Minnesota Epilepsy Group suspected Munchausen by Proxy Syndrome.

medical appointments in Minnesota.² Before Patrick's visitations with Michael, Andrea would remove the labels from Michael's prescription medication and handwrite instructions for Patrick to follow. Eventually, with the contact from the Minnesota Epilepsy Group, Patrick was given a more complete picture of what Michael had been undergoing.

Not surprisingly, Michael has also suffered academically from excessive absenteeism from school or lethargy while in school, due to overmedication. The principal of Michael's elementary school testified that the school staff has had concerns about Michael's academic success since second grade. Michael's teachers all agreed that he was academically capable but had not had the opportunity to learn. When Michael was taking anticonvulsant medications, he was groggy and unable to participate in class. During his third grade year he was absent approximately forty-five days. As a result of his excessive absences, he is a year and a half behind in all subjects. Furthermore, there were many instances of Andrea impeding Michael's school progress by completing his homework for him and instructing him that he was not capable of some school work, such as cursive handwriting. Although Andrea was aware of Michael's academic troubles, she arranged for Michael to have elective sinus surgery in October 2006 (that she insisted was for a nasal tumor), which only resulted in more absences.

Upon the discovery that Michael is in need of academic help, Patrick has responded well. He has been diligently involved with Michael's school progress,

² Patrick reported difficulty in obtaining information from Dr. Oliver, as the doctor preferred communicating with Andrea.

including maintaining weekly contact with Michael's teachers and providing extra instruction at home. Michael's teachers report that after Patrick's visitation weekends, Michael returns to school on Monday better prepared and ready to learn.

We further agree with the district court that granting Patrick primary physical care is in Michael's best interests.³ Dr. Frost, writing on behalf of the Minnesota Epilepsy Group to the Polk County Attorney's office, opined,

Michael has suffered substantial impairment from his mother's insistence that he is ill, has seizures, and is showing cognitive decline.

...

From a short and long term perspective, we are significantly concerned at this mother's ability to provide behavior management and appropriate health care management to keep Michael safe from harm. It is our belief that Michael is at physical and emotional risk if he remains in the care of his mother, Andrea Sanderman.

In addition, both the staff at the Minnesota Epilepsy Group and the staff at Michael's elementary school stated that Michael had behavioral issues, but only when Andrea was present. While Michael was hospitalized, the staff implemented the use of consistent behavioral management, such as a written and posted behavioral plan. The staff noted that Andrea was overtly resistant to participating; however they saw an immediate improvement in Michael's behavior, except when Andrea was present. While she was present, Michael would report physical symptoms and did not eat during meal times. A child psychologist recommended that Andrea and Michael meet with a mental health

³ The district court allowed Andrea alternating weekend visitation, a mid-week visit, alternating holidays and three, non-consecutive weeks during the summer. Of concern, but not before us on appeal, is that during those times, Michael may not be adequately protected from Andrea's manipulative efforts.

professional in Des Moines to address parenting and behavioral issues, to which Andrea refused. The staff at Michael's school also found that Michael's ability to progress was impaired due to Andrea's presence; therefore, the staff implemented a plan where Andrea was to "separate herself from [Michael] so he is able to function properly," which prohibited her from going to the second floor where Michael's classroom was located.

Patrick has done a good job in intervening for Michael, and in helping Michael take great strides to improve his academics and normal, daily functioning. Patrick is married and has two daughters. Patrick and his wife, Veronica, have good jobs with medical benefits, but made a conscious decision for Patrick to work fewer hours so that he could be at home with the children the majority of time. This allows Patrick to provide the structure and stability that Michael needs.⁴ Patrick and Veronica testified that the children have a bedtime routine and designated chore and homework times. Patrick and Veronica use positive reinforcement to encourage the children in their academics. Patrick has demonstrated that he is better suited to tend to Michael's educational needs and emotional development, as well as better suited to assure Michael's physical safety. Therefore, we affirm the district court.

AFFIRMED.

⁴ A psychologist at the Minnesota Epilepsy Group recommended Michael have a highly structured routine, including daily schedules.