

**IN THE COURT OF APPEALS OF IOWA**

No. 8-498 / 08-0121  
Filed August 27, 2008

**IN RE THE MARRIAGE OF LANNA J. HATFIELD AND CHRISTOPHER L.D. LINK**

**Upon the Petition of  
LANNA H. HATFIELD,**  
Petitioner-Appellee,

**And Concerning  
CHRISTOPHER L.D. LINK,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Poweshiek County, Joel D. Yates,  
Judge.

Christopher Link appeals the district court's denial of his petition to modify the physical care provisions of the decree dissolving his marriage to Lanna Hatfield. **MODIFIED AND REMANDED.**

Reyne L. See of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C.,  
Marshalltown, for appellant.

Michael W. Mahaffey of Mahaffey Law Office, Montezuma, for appellee.

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

**MILLER, P.J.**

Christopher Link appeals the district court's denial of his petition to modify the physical care provisions of the decree dissolving his marriage to Lanna Hatfield. Both parties request an award of appellate attorney fees. We modify and remand.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

In 2001 Christopher and Lanna began proceedings in Arizona to dissolve their marriage. Some three years later, on September 30, 2004, an Arizona court finalized the parties' dissolution by entering a "Consent Decree of Dissolution of Marriage (With minor children)." The parties' previously agreed upon "Custody Agreement" was incorporated into the decree. Lanna and Christopher have three children together, Jordan, born in 1997, Ethan, born in 2001, and Trevor, born in 2002. Trevor was born while the dissolution was pending. The parties agreed they would have joint legal custody of the children, with Christopher having physical care of Jordan and Ethan and Lanna having physical care of Trevor. Lanna also has an older son, Joseph, who was permanently placed in the legal custody of his paternal grandparents in March 2004.

On April 13, 2007, Christopher filed a petition to modify the decree to have physical care of Trevor changed from Lanna to him. Lanna filed an answer and her own petition seeking to have the physical care of Jordan and Ethan changed to her. A hearing was held on the petitions on January 9 and 10, 2008.

Christopher was thirty years of age at the time of the modification trial. He is employed with the Department of Homeland Security at the Des Moines

International Airport. He had worked there for approximately five years at the time of trial and earns close to \$37,000 per year. He is not married and owns a home in Grinnell where he lives with Jordan, Ethan, and his mother. The district court found Christopher has a stable life and that both Jordan and Ethan appear to be doing well in his care.

Lanna was also thirty years old at the time of trial. She lives with her paramour, Robert Everman, and Trevor. She has had several different jobs since the parties' dissolution and was not employed at the time of trial. Robert had recently started his own business, in which he purchases and re-sells homes in the Des Moines area. The last time Lanna worked twelve consecutive months was in 2005, when she earned approximately \$35,700 in the mortgage industry. Lanna has never paid ordered child support to Robert for Jordan and Ethan.

Lanna and Robert have lived in multiple homes with Trevor since the parties' dissolution. Their testimony varied somewhat on this point, but it appears they have lived in either four or five different homes in either two or three different communities. Lanna also lived at several additional residences during the year between the parties' custody agreement and the entry of the decree. In fact, since September 2004 the longest Lanna has lived at one residence is nine months to a year. Just prior to trial Lanna and Robert moved into a rental home in West Des Moines after being evicted from their previous home for failure to make payments as required under a contract.

In addition to recently losing their home, Lanna and Robert also recently had their truck repossessed. Lanna testified she believed the truck was in the

shop, while Robert testified the truck had been stolen. However, the seller of the truck, Larry Heishman, testified he recently repossessed the truck because Lanna and Robert had not made a payment on it since November 2006, and that they both knew he was trying to repossess the truck for some time and in fact had taken steps to hide the truck from him to avoid repossession. He also stated that the truck had insurance on it only for the first couple of months after it was purchased, but the insurance then lapsed for lack of payment in late 2006 or early 2007 and it had not been insured since then. Heishman also testified he had been contacted by the police regarding the truck being involved in a hit and run accident. Lana did not have a driver's license at the time of trial as a result of being involved in an automobile accident without having insurance on the vehicle and her failure to pay the resulting fines.

Based on these and other financial problems, the district court found Lanna to have a less stable life than Christopher, particularly from a financial standpoint. The court found that both Lanna's and Robert's testimony regarding the situation with their repossessed truck lacked credibility, and voiced some skepticism about their testimony regarding their recent inability to meet their housing contract obligations, finding it hard to imagine two individuals with backgrounds in the mortgage industry would even enter into the agreement they described. The court further noted that Lanna acknowledged she had paid none of her court-ordered child support obligation.

However, the district court concluded there was little evidence that Trevor is adversely affected by Lanna's or Robert's financial irresponsibility.

Accordingly, the court found “no substantial change in circumstances of a more or less permanent nature that requires a change in custody has been proven by either party at this time.” Thus, the court denied each party’s request to modify the physical care provisions of the decree. The court did, however, grant Christopher’s requests to allow him to claim all three children as dependents for income tax purposes and to allow each party three weeks of summer visitation.

Christopher appeals, contending the court erred by not transferring physical care of Trevor to him. Each party requests an award of appellate attorney fees.

## **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 (2007) (“An action for dissolution of marriage shall be by equitable proceedings . . . .”); *Id.* § 598.21 (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 decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Reinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court’s findings of fact and conclusions of law, but make such findings and conclusions from our de novo review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). 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 child superior care. *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 213 (Iowa Ct. App. 1994). If the parents are found to be equally competent to minister to the children, custody should not be changed. *Id.* Therefore, custody is ultimately changed only if it is in the child's best interest and the parent

seeking the change can prove an ability to minister more effectively to the child's well-being. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996). In determining which parent serves the child's best interests, the objective is to place the child in an environment most likely to bring the child to healthy physical, mental, and social maturity. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996).

For the following reasons, we disagree with the district court and conclude Christopher did prove material and substantial changes in circumstances since the decree.<sup>1</sup> Although we agree with the district court that some of Lanna's issues with financial irresponsibility do not directly affect Trevor, we believe many of them do, even if only indirectly. In addition, other factors shown by the record support and justify the modification sought by Christopher. We also conclude the record demonstrates that Christopher has proved an ability to minister more effectively than Lanna to Trevor's well-being. Thus, Trevor's best interests make it expedient to make the requested change of his physical care to Christopher.

It is clear from the record that the lack of stability in Lanna's life since the entry of the decree has had both direct and indirect adverse consequences on Trevor. As set forth above, she has had multiple residences in several different communities since the decree was entered, and has stayed at none for longer than nine months to a year. Shortly before the modification hearing she was forced to move yet again because she and Robert were unable to make the

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<sup>1</sup> Each party alleged the existence of a material and substantial change in circumstances requiring or justifying modification of the physical care provisions of the decree dissolving their marriage; they merely differed regarding the nature of the changes and what the resulting modification should be.

required contract payments on their residence. She also allowed one of her cousins with a known drug problem to live with her and Trevor for a period of time. Lanna has had several jobs since the dissolution, and was unemployed at the time of trial. In addition, Lanna's truck was repossessed shortly before trial for failure to make payments on it. Lanna denied knowledge of this fact at trial, claiming she believed the truck was just in the shop. Robert also denied knowledge of the repossession, stating he believed the truck had been stolen. However we, like the district court, find both Lanna's and Robert's testimony on this issue lacking in credibility.

Lanna had not had insurance on her vehicle for some time because she had allowed it to lapse due to non-payment. She was then in an accident and lost her driver's license for driving without insurance. The fact Lanna now does not have a vehicle or a driver's license means she cannot transport Trevor where he needs to go and thus must depend on Robert or others to do so. Lanna's financial instability and irresponsibility has thus directly affected Trevor in this manner.

In addition, perhaps in part due to her financial problems Lanna has never been able to, or at least has chosen not to, pay any child support whatsoever to Christopher. This at least indirectly affects Trevor, the result being that Christopher has had less money than he should have had with which to provide for Trevor when Trevor is in his care.

Christopher's sister, Misty Moline, was Trevor's preschool teacher for a short time after Lanna moved to West Des Moines. She was his teacher at times



when Trevor was with Christopher in Grinnell. It appears from the record that Lanna and Moline have never had a good relationship. In fact when Lanna lived in Grinnell she had Trevor enrolled in two preschools other than Moline's because she did not want him at Moline's. Moline testified that while Trevor was at her preschool she noticed he had trouble interacting with other children and his play was markedly more violent than the other children. Based on her and another teacher's observation of this behavior, Moline advised Lanna to have Trevor seen and tested by the Area Education Agency to determine if there was something that could be done to better prepare him for entering kindergarten. Lanna rejected this advice.

Moline also sits on a community board that encompasses all of the kindergarten and preschool teachers in the Grinnell area, and is a teacher and mentor for Child Care Resource of Greater Iowa. She testified that in her capacity on these boards she became aware that Lanna has outstanding bills for one of Trevor's previous preschools in Grinnell, and that another day-care provider in the community had voiced concerns about Lanna picking up Trevor while intoxicated. Lanna did not enroll Trevor in a new preschool following their move to West Des Moines.

Also of significance is the fact Lanna has had two "founded" or "confirmed" instances of child abuse for failing to properly supervise her children. Although these instances were not placed on the child abuse registry, we do not believe they are of as little significance as Lanna portrays them to be. Additionally, it appears Lanna has somewhat defaulted discipline of Trevor to Robert, and we

find some of Robert's disciplinary techniques contrary to Trevor's interest and well-being. Robert testified he has spanked Trevor with a wooden spoon, he has used abusive language towards the children such as calling them pigs and stupid, Trevor and Ethan are afraid of him, and he uses profanity around the children.

In addition, Lanna has at times interfered, either purposefully or inadvertently, with Christopher's rights as Trevor's joint custodian. For example, Christopher found out what physician Trevor was seeing and what school he is attending only by subpoenaing Lanna for that information prior to the modification hearing. Lanna does not inform Christopher of Trevor's medical appointments. Thus, Christopher was not able to be involved in any of the appointments or discussions that led to Trevor taking medication for hyperactivity, and he testified he did not even know who prescribed the medication. Lanna does not inform Christopher about Trevor's progress in school or his school activities. She did not list Christopher as the non-custodial parent on some of Trevor's kindergarten enrollment paperwork, instead leaving that portion blank, and listed a person who was temporarily living with her as the emergency contact person, rather than listing Christopher. In physical care determinations the denial by one parent of the child's opportunity to have meaningful contact with the other parent is a significant factor in determining the physical care arrangement. See Iowa Code § 598.41(1); *Will*, 489 N.W.2d at 399.

Lanna and the district court both relied heavily on the testimony of Trevor's kindergarten teacher, Sally Rindfuss. Rindfuss did testify that Lanna is

involved in Trevor's education and is a typical, good parent. She also testified that Trevor has been progressing well in school, he is moving at about the same rate as his peers, and he was on track to be prepared for first grade. However, Rindfuss further stated that when Trevor started school he created trouble by being physical with friends and by other behaviors. She also voiced concerns about Trevor having some bad days on Mondays and Tuesdays, being hyperactive and destroying materials. She believed this might have something to do with him not consistently taking his medication, but she did not know who had Trevor which weekends. Trevor missed four days of school and had been tardy five times as of the end of the first trimester of school, in approximately November 2007. His report card at the end of the first trimester showed he was "Meeting expectations" in only three of approximately thirty-two relevant areas, and "Progressing" in the remainder of them.

We agree Rindfuss's testimony shows Trevor is making some progress in school, and that Lanna has been a good and involved parent in his schooling. However, we place somewhat less weight on Rindfuss's testimony than did Lanna and the district court. We do so because Rindfuss had only known Trevor for approximately four to five months at the time of the modification hearing in January 2008. Thus, while we by no means discount Rindfuss's testimony, it is only one small part of the evidence. We therefore give it only such weight as is appropriate under the particular facts and circumstances in this case.

For the reasons discussed below we also conclude that Christopher has proved he is better able to minister to Trevor's well-being than Lanna, and to

better provide an environment for Trevor that will more likely bring him to healthy physical, mental, and social maturity.

Christopher has had a stable job with good income for the past five years. He owns his own home where he lives with Jordan, Ethan and his mother. He is current on all of his financial obligations, has a vehicle, and has lived in the same community for six years. Christopher has the benefit and support of several of his immediate and extended family members living in the area as well. The record demonstrates that Jordan and Ethan are doing well in Christopher's care. Both are apparently healthy, performing well in school, and are involved in multiple extracurricular activities. Trevor has been involved in some of these activities with his siblings while in Christopher's care. Christopher testified Trevor has expressed an interest in, and would have the opportunity to be involved in, several activities if he were to live with him full-time. These include swimming lessons, dance, gymnastics, and arts and crafts. Trevor would also be able to be involved in a church group with Jordan and Ethan. It does not appear from the record that Trevor has been involved in any extracurricular activities in West Des Moines since living there with Lanna.

Further, there is no substantial evidence in the record that Christopher has, either purposefully or inadvertently, failed to recognize or interfered with Lanna's rights as a joint legal custodian of Jordan and Ethan, while Lanna has failed to recognize or interfered with Christopher's rights as a joint legal custodian of Trevor, as discussed in detail above. See *Will*, 489 N.W.2d at 399.

Finally, as noted above, Ethan and Jordan have both been in the physical care of Christopher since the parties' dissolution. While not an absolute, we prefer to keep siblings together when possible. *In re Marriage of Smiley*, 518 N.W.2d 376, 380 (Iowa 1994) ("Siblings should not be separated from one another without good and compelling reasons. As the innocent victims of marital bankruptcy, they should not be denied this benefit except when their best interests require it." (Citations omitted)). We see no good and compelling reason to keep these siblings apart any longer, and their best interests do not require it. Trevor would no doubt benefit from having more continuous and close contact with his brother and sister.

#### **IV. APPELLATE ATTORNEY FEES.**

Christopher and Lanna each request an award of appellate attorney fees. Such an award is not a matter of right, but rather rests in this court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). The factors to be considered include the needs of the party requesting the award, the other party's ability to pay, and the relative merits of the appeal. *Id.* Lanna is currently unemployed and has demonstrated an ongoing lack of financial responsibility. Christopher is employed in a stable, well-paying job. However, we have determined that Christopher's appeal is meritorious. Accordingly, because we believe any factors warranting an award of appellate attorney fees to one party are essentially offset by factors warranting an award to the other party, each party shall be responsible for their own attorney fees on appeal.

**V. CONCLUSION AND DISPOSITION.**

Upon our de novo review of the record as a whole and for all the reasons set forth above, with deference to the position of the trial judge to assess the demeanor and credibility of the witnesses, we are nevertheless convinced there has been a material and substantial change in the parties' circumstances since the entry of their dissolution decree and that Trevor's long-range best interests would be better served in the physical care of Christopher rather than Lanna. Christopher can better provide an environment for Trevor that will bring him to healthy physical, mental, and social maturity. We therefore modify the physical care order and place Trevor in Christopher's physical care. We remand to the district court to make any necessary orders concerning visitation and to modify child support obligations as appropriate. Each party is responsible for their own appellate attorney fees. Costs on appeal are taxed to Lanna.

**MODIFIED AND REMANDED.**