

IN THE COURT OF APPEALS OF IOWA

No. 8-690 / 08-0471
Filed December 17, 2008

**IN RE THE MARRIAGE OF RYAN STEFFEN
AND PAMELA STEFFEN**

**Upon the Petition of
RYAN STEFFEN,**
Petitioner-Appellant,

**And Concerning
PAMELA STEFFEN,
n/k/a PAMELA BIRD,**
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E.
Hoffmeyer, Judge.

The petitioner appeals following the district court's grant of the
respondent's modification petition. **AFFIRMED.**

Randy L. Waagmeester of Waagmeester Law Office, P.L.C., Rock Rapids,
for appellant.

David L. Reinschmidt and Robert B. Brock of Munger, Reinschmidt &
Denne, L.L.P., Sioux City, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

Ryan Steffen appeals the district court's order granting modification of the physical care provisions of the dissolution decree of Ryan and Pamela Steffen.¹ We conclude the district court's ruling modifying physical care was proper, and we affirm.

I. Background Facts and Proceedings.

Pamela and Ryan were married in October 1992 and have two children: Josh, born September 1994, and Amanda, born July 2000. The parties' marriage was dissolved by a contested decree in July 2004, and physical care of the children was placed with Ryan. In February 2005 Pamela filed for modification of the child support provisions of the decree, and in June 2005 the district court lowered Pamela's child support obligation to seventy-five dollars per month.²

At the time the decree was entered awarding Ryan physical care of the children, both parties worked full-time, were active in the children's lives, offered the children a suitable home environment, and were in committed relationships with new partners. Although the court noted that Pamela was arguably the primary caretaker of the children, it ultimately determined, "Ryan is the more capable, stable, and responsible parent. He is better able to care and provide for

¹ Pamela Steffen is now known as Pamela Bird.

² Pamela's original child support obligation was \$445 per month, based on her full-time income of approximately \$20,000 per year while she worked for Cyclone Securities. Thereafter, Pamela lost her job with Cyclone Securities and was unable to find other full-time employment. In its order modifying Pamela's child support obligations, the court found as follows:

The testimony that [Pamela] sought and is seeking employment ever since she lost her last job in August 2004 is credible, and the court does not believe her job search was merely perfunctory. . . . The evidence shows [Pamela] was actually seeking employment and not until her unemployment compensation payments had expired and [she] had no income of any kind did she institute this modification proceeding.

the children. It is in the children's best interests that Ryan be awarded the physical care of the children."

In reaching this conclusion, the court noted Ryan's involvement with his church, his stable employment and financial future, and the support provided by his family. In contrast, the court noted Pamela's "financial weaknesses and lapses in judgment." Specifically, the court pointed out Pamela's 2002 conviction for shoplifting items in excess of \$500, her withholding of the parties' mail to conceal credit card debt she had incurred, and the fact that she convinced her future fiancé, David Bird, to forge Ryan's name on the endorsement portion of an \$800 tax relief check jointly made out to Ryan and Pamela. Pamela appealed the decree. In July 2005 this court affirmed the district court's decision, finding that "[a]lthough Pamela is a loving parent, her poor judgment is cause for concern."

Since the decree was entered in July 2004, many changes have occurred. Both parties married the people they were romantically involved with during the dissolution proceedings: Pamela married David Bird in August 2004, and Ryan married Ami Van Egdorn in October 2004. Josh and Amanda began living with Ryan and Ami in Ryan's home in Germantown, Iowa. Ami had three children from a previous marriage who lived with Ami's parents.³ Ryan adopted two of Ami's children in the spring of 2006, and the children moved into the house in

³ In the decree, the district court noted the fact that Ami's children lived with her parents was not a negative. The court stated:

When she and her first husband began to grow apart, Ami had the children move in with her parents as a safe and stable home under the circumstances at the time and these children have grown comfortable with the arrangement and wish to leave it unaltered. Ami has regular contact with her children. Ryan and his children also have regular contact with Ami's children and they have developed a good relationship.

Germantown. David Bird did not have any children, nor had he previously been married.

Problems soon began to occur for Ryan and Ami. They separated in October 2006 and were divorced in June 2007. Ryan began dating his current girlfriend, Melinda Thompson, in February 2007. Ryan has not maintained contact with Ami or her two children he adopted, likely due to the turbulent end to the marriage. As the district court noted:

Ryan's relationship with Ami ended tumultuously and with the need for law enforcement involvement. He had in anger discussed burning the house down and her and her/his children were effectively evicted from the residence by Ryan. Ryan has had no contact with his adopted children despite him being required to pay child support for them.

In addition, witnesses testified to Ryan and his family's negative remarks about Pamela made in front of the children. One witness testified that she believed Pamela would be alienated from the children because of these statements and the attitude of Ryan and his family.

Furthermore, health concerns were raised with regard to the children. The children have allergies and doctors warned that exposure to smoke exacerbates their symptoms. However, Ryan continued to smoke in the children's presence and allowed Ami and Melinda to smoke in their presence. Finally, since Ryan's divorce from Ami, he has no longer regularly attended church.

In May 2007 Pamela filed another petition to modify the dissolution decree, this time with regard to the physical care provisions of the decree. In her petition, Pamela (1) cited many reasons there had been a material and substantial change in circumstances; (2) alleged she had maintained a stable

environment for the children and it was in the best interests of the children that she be awarded physical care; and (3) requested that Ryan pay child support in accordance with child support guidelines.

In its order modifying the dissolution decree, the district court determined a material and substantial change in circumstance had occurred and that Pamela would be the superior caretaker for the children. The court noted Ryan's poor decision-making and questioned his attitude and demeanor. The court found that Ryan "does not seem to accept any responsibility for the fact his poor relationship choices have led to a turbulent living situation for his children." The court further found that Pamela maintained a stable environment for the children and made sacrifices to maintain the children's relationship with Ryan and to be flexible with visitation. The court determined it was in the best interests of the children that physical care be placed with Pamela. The court awarded Ryan visitation with the children every other weekend and alternating holidays.⁴ The court also modified the child support obligations, ordering Ryan to pay \$780 per month. Ryan now appeals.

II. Scope and Standard of Review.

We review the modification of a dissolution decree de novo. Iowa R. App. P. 6.4; *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004). We give weight to the district court's fact findings, especially when we consider witness credibility, but we are not bound by those findings. Iowa R. App. P. 6.4;

⁴ The visitation schedule in the original decree allowed Pamela visitation with the children every other weekend, one night mid-week, and alternating holidays. In the modification, the court did not allow Ryan the mid-week visit, presumably due to travel concerns for the children, as the parties lived approximately sixty miles apart.

McCurnin, 681 N.W.2d at 327. The district court has reasonable discretion in determining whether modification is warranted, and we will not disturb that discretion on appeal unless there is a failure to do equity. *In re Marriage of Walters*, 575 N.W.2d 739, 741 (Iowa 1998). Prior cases have little precedential value, and we must base our decision on the facts and circumstances unique to the parties before us. *In re Marriage of Kleist*, 538 N.W.2d 273, 276 (Iowa 1995). Our primary concern is the best interests of the children. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988).

III. Issues on Appeal.

A. Physical Care.

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 Pals*, 714 N.W.2d 644, 646-47 (Iowa 2006). To change a custodial provision of a dissolution decree, the applying party is required to establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the child's best interests make it expedient to grant the requested change. *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980). The party seeking to alter physical care must also demonstrate he or she possesses the ability to provide superior care for the child, *Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002), and to minister more effectively to the child's well-being. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). This heavy burden stems from the principle that once custody of children has been fixed, it should be disturbed only for the most cogent reasons. *Mikelson*, 299 N.W.2d at 671.

We find it clear from the record that there has been a material and substantial change in circumstances since the original decree. At that time, Ryan was living with Ami, whom he eventually married. Josh and Amanda lived with Ryan, Ami, and later two of Ami's children whom Ryan adopted. Ryan has now divorced Ami, is dating someone else, and has no contact with the two children he adopted. Ryan's relationships have led to a turbulent living situation for Josh and Amanda.

Pamela remarried and works part-time rather than full-time. Ryan and Pamela have lacked proper communication about the children and have not been mutually flexible about visitation. For these reasons, we agree with the district court that there has been a material and substantial change in circumstances.⁵

We now turn to the issue of whether Pamela proved herself able to provide superior care for the children. Ryan claims the court should not have modified the physical care arrangement because Pamela did not prove by a preponderance of the evidence an ability to minister more effectively to the children's well being. He alleges there is no evidence of him having a series of live-in girlfriends. He points out that Pamela has required the parties to drive the entire distance from Germantown to Sergeant Bluff where she resides to exchange the children for visitation, instead of meeting halfway in between. Finally, Ryan claims the evidence strongly shows Josh and Amanda are happy,

⁵ Ryan alleges the district court erred in using the incorrect standard when it found "there had been a material and substantial change in circumstances that was not contemplated *by the parties* at the time of their original custodial determination." We agree this is the incorrect standard; however, we note that the court cited the proper standard more than once in its ruling. We therefore conclude the court's usage of the incorrect standard was merely a typographical error and will not further address Ryan's claim with regard to this issue.

well-adjusted children and they are well-cared for and doing well academically. He contends he provides more than adequate and satisfactory care for them.

Pamela claims Ryan refuses to cooperate and effectively communicate with her about important events in the children's lives. She also alleges Ryan refuses to grant her extended visitation beyond the minimum outlined in the decree. She points out that Ryan's relationships do not promote stability for the children, and specifically notes the tumultuous end of Ryan's marriage to Ami. Pamela contends Ryan's care is detrimental to the health of the children because Ryan and his female companions smoke in their presence. She further alleges Ryan does not promote the children's relationship with her and his actions discourage the children from having a healthy relationship with their mother.

The critical issue in deciding physical care is not which parent possesses the greater right to the children; rather, the controlling consideration is the best interests of the children. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interests of the children. *Id.* Our objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *Id.* Greater primary care experience is one of many factors the court considers, but it does not ensure an award of physical care. *See In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa Ct. App. 1995).

Since the parties' separation, the children have spent a larger portion of their lives in Ryan's physical care. However, the quality and stability of that physical care is subject to dispute. As the district court found:

Ryan has made some extremely poor decisions. He married Ami and in an abrupt manner kicked her out of the home along with the two children he had adopted and made threatening statements that required law enforcement involvement when they separated. The court's observation of the testimony and demeanor of Ryan is that he is adept as a parent when he has someone who can assist him. He acknowledges he seems to go from one relationship to another rather quickly. Despite fighting among their (his and Ami's) children, he adopted her children who were not even living with them at the time and months later abruptly kicked them out of the home and ended up getting a divorce. He hadn't spent any significant time with them before they moved into the residence and ultimately he has now ended up paying over \$800 in child support as a result of these decisions.

Without a partner and the support that comes from that, he has struggled. The children are still doing well; however, he is already involved in another relationship with another woman wherein they are each spending overnights when the children are with them. The court does not believe this is intentional, but the distance between Ryan and Pamela accentuates the greater need for communication and to make the children's activities known to the other party. There have been occasions where events have fallen through the cracks. Ryan has been more flexible after his divorce from Ami but communication with Pamela is still strained.

The court further pointed out Ryan's and his family's behavior toward Pamela in front of the children and Ryan's failure to accept responsibility for his poor decisions:

Ryan and his family, especially his mother, have made derogatory statements about Pamela when the children are around. . . . Ryan's attitude and demeanor while testifying have led the court to question whether he really believes the children are better off with him or if he is continuing his request for physical care because he has previously prevailed and doesn't want to concede that alone he is not as adept. . . . Ryan also appears angered by his having to incur attorney fees in defending litigation related to this matter. However, he does not seem to accept any responsibility for the fact his poor relationship choices have led to a turbulent living situation for his children.

In contrast, the court noted Pamela's stability, sacrifices for the children, and efforts to extend visitation:

Pamela has been in a stable relationship and is still residing in the family home. She has sacrificed full time employment and job opportunities due to her having to travel some distance to be involved in the children's activities and to pick up and exercise her visitation. These efforts have been extraordinary considering the length of time she has traveled for weekday visitation and school activities. While the court may question whether that weekday visitation was in the children's best interest due to the distance and traveling and windshield time involved, she has religiously exercised this option, seemingly without complaint and has asked for additional visitation. . . . The court generally will place the children with the parent who has put aside their personal animosity and will do what is in the best interest of their children which would include not speaking ill of their father or mother, being flexible with visitation and encouraging and promoting expanded contact and visitation with the other party when requested or warranted by special events or circumstances.

The record reveals that the issues the district court considered at the time of the dissolution did not seem to be present at the time of the modification. Ryan no longer regularly attends church, Pamela does not seem to exhibit the same financial weaknesses, and Ryan's family was not offering the same positive influences on the children. Furthermore, Ryan is in another new relationship, but he does not exercise visitation with the two children he adopted during his marriage with Ami.

Upon our de novo review of the record, we conclude the district court properly awarded Pamela physical care because she has proven she possesses the ability to provide superior care for the children and she is the parent most likely to bring them to a healthy, physical, mental, and social maturity. See *Kunkel*, 555 N.W.2d at 253. Pamela provides a more stable and responsible environment for the children. We also find the visitation schedule set forth by the district court is appropriate.

B. Attorney Fees.

Ryan requests attorney fees on appeal and further contends he should recover for his attorney fees incurred in the modification proceedings.⁶ An award of attorney fees is not a matter of right, but rather rests within the court's discretion. *In re Marriage of Hocker*, 752 N.W.2d 447, 451 (Iowa 2008). This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). These awards are based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.*; *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). After considering these factors, we decline to award attorney fees to Ryan. Costs on appeal are assessed one-half to each party.

AFFIRMED.

⁶ Ryan requested that Pamela be ordered to pay at least \$4000 of his attorney fees incurred in the modification proceedings.