IN THE COURT OF APPEALS OF IOWA

No. 9-062 / 08-1300
Filed March 11, 2009

IN RE THE MARRIAGE OF MICHAEL PHILLIP FERGUSON AND TANYA DENISE CUE

Upon the Petition of
MICHAEL PHILLIP FERGUSON,
Petitioner-Appellee,

And Concerning
TANYA DENISE CUE,
Respondent-Appellant.

Appeal from the Iowa District Court for Calhoun County, William C. Ostlund, Judge.

Tanya Cue appeals from the modification of the child custody provisions of the parties' dissolution decree. **AFFIRMED.**

Dani I. Eisentrager of Eisentrager Law Office, Eagle Grove, for appellant.

Vicki R. Copeland of Wilcox, Polking, Gerken, Schwarzkopf & Copeland, P.C., Jefferson, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

MAHAN, P.J.

Tanya Cue appeals from the modification of the child custody provisions of the parties' dissolution decree. She contends she should have been awarded physical care. We affirm.

The marriage of Tanya Cue and Michael Ferguson was dissolved in October 2006, at which time the parties stipulated to shared custody of their three children: Kierstyn, born in 1996; Konnor, born in 1999; and Kenahdi, born in 2001. However, communication between the parents has been strained and consists primarily of text messaging. Konnor is experiencing difficulties with anger management, and Tanya has not voluntarily shared information about Konnor's counseling with Michael.

In December 2007 Tanya filed a petition to modify the child custody provisions of the decree. After a hearing on the matter, the district court entered its findings of fact, conclusions of law, and ruling, placing the children in Michael's physical care and ordering Tanya to pay child support. In reaching its decision, the district court "weighed heavily upon its perception as to the sincerity and credibility of both Tanya and Mike." It found "either parent could provide the necessities for the children," but determined custody with Michael would be in the children's best interests. The district court considered Tanya's motion to enlarge or amend, denying her request for a substituted custody finding. Tanya now appeals.

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. 6.14(6)(*g*); *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). In determining which parent serves the children's best interests, the objective is to place the children in an environment most likely to bring the children to healthy physical, mental, and social maturity. *In re Marriage of Courtade,* 560 N.W.2d 36, 38 (Iowa Ct. App. 1996).

This court has previously found a substantial change in circumstances when an unanticipated breakdown in communication and cooperation between the parties was so substantial that it disrupted the children's lives, and the parties themselves conceded the joint care arrangement was no longer viable. *See Melchiori v. Kooi,* 644 N.W.2d 365, 368 (Iowa Ct. App. 2002); *In re Marriage of Walton,* 577 N.W.2d 869, 870 (Iowa Ct. App. 1998).

In the original decree the parents were to share the legal and physical care. As a result, they both were found suitable to be primary care parents. *Melchiori*, 644 N.W.2d at 368-69. Consequently, we address this as an initial custody determination, and the question is which parent can render better care. *Id.*

Having carefully reviewed the record in this appeal, we agree with the district court that Michael will provide the more stable environment for the parties' children. The court acknowledges that both parents love their children and could adequately care for them. However, the shared physical care arrangement is not

optimal and is placing the children in a stressful situation. For the reasons stated by the district court, we affirm the physical care placement with Michael.

Tanya argues that the physical care arrangement ordered by the court improperly separates the children from their half siblings. There is a presumption that siblings should not be separated. *In re Marriage of Will,* 489 N.W.2d 394, 398 (Iowa 1992); *In re Marriage of Jones,* 309 N.W.2d 457, 461 (Iowa 1981). Our supreme court has held this general principle should also govern awards of physical care in cases of half siblings as well as others. *In re Marriage of Quirk-Edwards,* 509 N.W.2d 476, 480 (Iowa 1993). However, this rule is not ironclad, and "circumstances may arise which demonstrate that separation may better promote long-range interests of children." *Will,* 489 N.W.2d at 398.

In reviewing its findings of facts, the court correctly applied the proper standards. The record establishes the relationship between the three children of Tanya and Michael and Tanya's older son is a source of stress and includes allegations that the older boy physically confronts Konnor, who is much younger and smaller. Tanya's oldest child, a daughter, is a student in college and no longer lives with Tanya—the physical care arrangement does not separate the children from her. Like the district court, this court concludes the separation of these half siblings will better promote their long-range best interests. *See id.* at 398-99. We affirm.

AFFIRMED.