IN THE COURT OF APPEALS OF IOWA

No. 9-064 / 08-1307
Filed May 29, 2009

IN RE THE MARRIAGE OF JULIE R. MCCRADY AND CHRISTOPHER P. MCCRADY

Upon the Petition of
JULIE R. MCCRADY,
Petitioner-Appellee,

And Concerning
CHRISTOPHER P. MCCRADY,
Respondent-Appellant.

Appeal from the Iowa District Court for Webster County, Joel Swanson, Judge.

Christopher McCrady appeals from the district court's refusal to modify the decree dissolving his marriage to Julie McCrady. **AFFIRMED.**

Monty Fisher, Fort Dodge, for appellant.

Kurt Pittner, Fort Dodge, for appellee.

Heard by Sackett, C.J., and Vogel, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SACKETT, C.J.

Christopher McCrady, the father of two daughters, appeals from the district court's refusal to modify the decree dissolving his marriage to Julie McCrady. Christopher claims the joint physical care he and Julie agreed to and that was incorporated in the decree is not working, it should have been severed, and he should have been granted primary physical care of the children. We affirm.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.4. Prior cases have little value as precedent, and we base our decision primarily on the particular circumstances of the parties presently before us. *See In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

PROCEEDINGS. Christopher and Julie were married in November of 1993. They had two daughters. The first was born in May of 1993 and the second in June of 1994. The marriage was dissolved on May 30, 2007. The dissolution court approved the parties' agreement to share physical care of the children. They were to alternate care every week and each was to have certain enumerated holidays. Christopher and Julie signed a parenting plan that provided, among other things, that they both would continue to live in the Fort Dodge area and communicate and negotiate with respect to the children's needs. They also agreed that the children would continue to attend St. Edmond Catholic School in Fort Dodge.

Following the dissolution Julie stayed in the parties' Fort Dodge home until it was sold. She then moved for several months to her parents' home in Badger, Iowa, ten miles from Fort Dodge. Julie next moved from Badger to Hardy, Iowa. She moved into the home of Dean Kruger. At some point Julie and Dean became engaged and married. Dean is the sheriff of Humboldt County and Hardy is located in Humboldt County, a county adjoining Webster County where Fort Dodge is located.

On January 25, 2008, Christopher filed an application to modify the dissolution decree. He contended the move by Julie to a location over twenty-five miles from Fort Dodge was a substantial change of circumstances not contemplated by the dissolution court. He asked that the decree be amended to designate him as the primary physical care parent, that Julie be granted visitation, and that she be ordered to pay child support. Julie answered, asking that his application be dismissed.

The matter came on for hearing on July 16, 2008. The next day the district court entered a ruling finding that Christopher failed to show a material and substantial change in circumstances not contemplated by the court when the dissolution decree was entered. The matter was dismissed.

MODIFICATION OF CUSTODY. Christopher contends the district court should have granted his request for modification. To change the custodial provision Kevin must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that his daughters' welfare supports the requested change. *See In re Marriage of*

Mikelson, 299 N.W.2d 670, 671 (Iowa 1980). 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. *Id.* If a substantial change of circumstances is shown, only then do we make a determination of which party should have primary physical care. The parties had joint physical care, consequently both parents have been determined to be suitable caretakers. If a substantial change of circumstance is shown, then for Christopher to be granted primary physical care he must show he is the better parent. *See Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002). We believe he has failed to show both a substantial change of circumstances and that he is the better parent.

Christopher has an American Family Insurance agency in Fort Dodge. Julie is an registered nurse and works at Trinity Hospital in Fort Dodge. These are the jobs the parties had at the time of the dissolution.

Christopher argues there are substantial circumstances to support the change. He further contends that the decree should be modified because the parties' communications have broken down, the children want to live with him in Fort Dodge, Julie has remarried and moved to another town, and the transportation issues are difficult for the children.

I. Substantial Change of Circumstances. Christopher contends that Hardy is not within the "Fort Dodge area" as contemplated by the dissolution court and the parties. He concedes that he did not object to Julie living in Badger, ten miles away, but that Hardy is too far from the children's school. Julie contends Christopher knew she might be moving to Hardy when the parenting

agreement was signed. Christopher also argues that Julie's remarriage is a change of circumstances. We agree the marriage is a change of circumstances. However, this alone does not justify a change in the physical care arrangement agreed upon by the parents. While it could be argued Julie's move could be called a changed circumstance, we are not convinced that a twenty- to thirty-minute increase in the time it takes for a child to get to school is a changed circumstance. Particularly not where, as here, the children's mother is driving and spending the time with her daughters.

II. Communications. Both parties feel that they have had a breakdown in their communications. They each introduced in evidence lengthy diaries recording their communications concerning their children since the dissolution. While the diaries are self-serving and we give them little weight, they do convince us that both parents have sought to create difficulties for the other and neither is as cooperative as they pledged to be in their parenting agreement. While the lack of communication cannot benefit the children, there is no evidence that it has seriously adversely affected them, though a failure of the parents to improve their communications may do so in the future.

III. Children's Preferences. The children testified and were clear that they wanted to live with their father in Fort Dodge because they disliked having a twenty- to thirty-minute ride to school during their weeks with their mother and they miss the contact with their Fort Dodge friends. They also testified that the drive took from their homework time. Christopher lives four blocks from their school. Both children testified they love their mother and want to see her.

Neither expressed any positive or negative feelings about their stepfather. It did not appear they had much of a relationship with him.

We give weight to the children's preference. *See In re Marriage of Ellerbroek*, 377 N.W.2d 457, 461 (Iowa Ct. App. 1985). However, deciding if the decree should be modified is more complicated than merely asking the children where they want to live. *See id.* We give less weight to their preference in a modification action than we do in an original custody dispute. *See id.* In assessing the children's preference we look at, among other things, their age, educational level, and relationship with other family members. *In re Marriage of Jahnel*, 506 N.W.2d 473, 474 (Iowa Ct. App. 1985). We can understand that the children find it more convenient to live four blocks from school rather than twenty or thirty minutes away. We can also understand that they want more contact with their Fort Dodge friends. As noted above, we do not consider this a substantial change in circumstances. The commute here is not unreasonably long and it provides the children time alone with their mother. The children love their mother and want to spend time with her. The record supports a finding that she is a good parent. It appears that she was the one most interested in seeking dissolution of the marriage and she had some relationship with her current husband prior to the time the marriage was terminated. The children apparently have exhibited some animosity towards her because of these facts. However, the children also appear to have current animosity towards her because of her refusal to allow them to live in Fort Dodge with their father rather than change homes every week.

These are two concerned, dedicated, and adequate parents. They both sought to remain in their children's lives after the marriage was dissolved. They continue to have similar goals for the children and both support their daughters' attendance at St. Edmond Catholic School and the various activities in which the children participate. There is general agreement on child-rearing issues. The greater agreement there is on child rearing issues, the lower the likelihood that ongoing bitterness will create a situation where the children are at risk of becoming pawns in post-dissolution marital strife. *See In re Marriage of Hansen*, 733 N.W.2d 683, 699 (Iowa 2007). The parties also have extended families who care for the children and have not let the dissolution interfere with their relationship with the parents. The children's paternal grandparents are very involved with the children. The grandmother has taken care of the children since infancy and continues to assist their father with the children's care. She has remained available to assist Julie with the children when needed and testified that Julie is a good mother. Julie's family also helps with the children's care and Julie's sister is responsible for the children after school on Julie's weeks.

There are no substantial changes that support a modification and Christopher has failed to show he is the better parent. We agree with the district court that the care arrangement should not be changed.

Costs on appeal are charged to Christopher. We award no appellate attorney fees.

AFFIRMED.