

IN THE COURT OF APPEALS OF IOWA

No. 3-590 / 12-2244
Filed July 24, 2013

**IN RE THE MARRIAGE OF MELINDA
GOETZ AND JEFFORY GOETZ**

**Upon the Petition of
MELINDA GOETZ, n/k/a MELINDA SCRIBNER,**
Petitioner-Appellant,

**And Concerning
JEFFORY GOETZ,**
Respondent-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Joel A. Dalrymple, Judge.

Melinda Goetz, n/k/a Melinda Scribner, appeals from the modification of the physical care provision of the decree of dissolution of her marriage to Jeffory Goetz. **AFFIRMED.**

Kevin J. Kennedy of Kennedy & Kennedy, New Hampton, for appellant.

Laura J. Parrish of Miller, Pearson, Gloe, Burns, Beatty & Parrish, P.L.C.,
for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Melinda Goetz, n/k/a Melinda Scribner, appeals from the modification of the physical care provision of the decree of dissolution of her marriage to Jeffory Goetz. She argues the district court improperly modified physical care of the parties' two children as no substantial change in circumstances occurred. She also argues the court improperly calculated her income for child support purposes. We affirm, finding the district court properly transferred physical care to Jeffory and the income calculation was proper.

I. Facts and proceedings.

The parties were married in Iowa in 1997 and divorced ten years later. During the marriage the parties had two children. Jeffory moved out of the state in 2005 to pursue better employment, Melinda kept the kids in Iowa with her. The terms of the decree dissolving the marriage maintained this arrangement. At the time of the divorce in 2007, Melinda earned \$16,640 and Jeffory earned \$27,040 a year. Jeffory was ordered to pay \$685 a month in child support. During the first couple of years following the divorce, Jeffory struggled to pay the support and exercised visitation when he could afford to travel.

Jeffory's situation improved after he moved to Casper, Wyoming. At the time of trial, Jeffory had lived in Casper for six years. He had maintained employment as a public relations specialist at the same business for four and a half years and become engaged to be married. His fiancée was also employed and the couple had recently purchased a four-bedroom home.

Melinda's post-dissolution life was substantially less stable. She remarried in 2011 to James Scribner. That same year, she was fired from work

at her second part-time employment after she misappropriated funds for her own use. She was charged with theft in the second degree but pled guilty to a reduced charge of theft in the third degree. She confessed to taking money from her cash drawer for gas, groceries, or other necessities. She was sentenced to a two-year suspended prison term. Melinda was convicted or pled guilty to nine criminal theft charges since the divorce—six of which occurred in the year and a half prior to trial. At the time of trial, Melinda was employed as an assistant to a CPA—a full-time job three months of the year, and part-time the rest.

Compounding the problem with Melinda's criminal and financial troubles is her living arrangement with the children. She and the children moved into James's home after being evicted from their prior home. On a day-to-day basis, seven people reside within the three-bedroom home. Besides Melinda, James, and the two children at issue here, James's former paramour and their child from that relationship reside in one of the bedrooms, and the ex-paramour's daughter from another relationship resides in the home. The ex-paramour does not contribute to the household income. Every other weekend the number of inhabitants can increase from seven to nine occupants as two other children fathered by James stay at the house.

Melinda and James were delinquent on the tax payment for the home at the time of trial, and James owed \$12,000 in back child support. Civil judgments had been entered against both Melinda and James, including a bank judgment of \$15,000 entered the week before trial. An instrument rented for one of the children was repossessed after Melinda failed to make payments on it. Melinda

and James have asked others for money repeatedly to avert various disasters such as repossession of a vehicle or to prevent Melinda from being arrested.

The two children perform well in school; however, they each missed more than twenty days of class in the 2011–2012 school year. One of the children has a medical problem requiring treatment. Melinda takes her to an out-of-state facility for treatment though it could be done locally at a time which would not interfere with school. The child's math teacher noted the child misses school most Monday, Wednesday, and Friday mornings which causes her to miss a large part of math class.

The district court determined Melinda's deteriorating situation and Jeffory's stability constituted a material change in circumstances and found Jeffory could provide superior care. It transferred physical care of both children to Jeffory. The court also ordered Melinda to pay Jeffory \$195 a month in child support, based on her estimated income of \$15,497 per year. Melinda appeals from both of these provisions of the modification order.

II. Analysis.

We engage in de novo review of an action to modify a dissolution decree. Iowa R. App. P. 6.907; *In re Marriage of Brown*, 778 N.W.2d 47, 50 (Iowa Ct. App. 2009). We give weight to the district court's factual findings, especially regarding credibility, but we are not bound by those findings. Iowa R. App. P. 6.904(3)(g). We also are mindful that "prior cases have little precedential value" and we must base our decision on the specific circumstances of the parties. *Melichiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002).

A. *Physical care.*

A change in physical care can only be made where there is a substantial change in circumstances that relates to the welfare of the children and was not contemplated by the court at the time the decree was issued. *Id.* “[T]he parent seeking to change the physical care from the primary custodial parent to the petitioning parent has a heavy burden and must show the ability to offer superior care.” *Id.*

Melinda argues no substantial change in circumstances has occurred, especially none that relate to the children’s welfare, because her financial situation was not very good at the time of the divorce, and her criminal issues “have no direct impact on” the children. We find this argument myopic at best. While she may not have made much money at the time of the divorce, she had not been evicted while acting as primary caregiver, had not been fired for stealing from her employer, had not been convicted or pled guilty to nine criminal theft charges—six of which occurred in the year and a half prior to trial, and had not caused the repossession of a musical instrument for one of the children. Her crimes and decisions do affect the children. She now is on probation and has other pending charges—she faces the prospect of jail time. At the time of the divorce it was not contemplated that Melinda and the children would take up residence in a three-bedroom house with at least four, sometimes six other people. We find a substantial change in circumstances affecting the welfare of the children has occurred. *See id.*

Next she argues that even if a change in circumstances occurred, Jeffery cannot offer “superior care.” *Id.* She points to the preference of the children and

their performance in school, stating this success and the children's lives will be interrupted by the move. She argues Jeffory has "limited actual parenting experience" and therefore cannot show he will offer superior care.

While the children have performed relatively well in school, the district court determined this was because school was an escape from their chaotic home life. Jeffory offers the children a stable home and a steady income in stark contrast to the instability offered by Melinda. The district court found Jeffory and his fiancée to be welcoming and eager to care for the children, and the children like Jeffory's fiancée. The children have expressed a desire to stay in Iowa; however, the district court found this was primarily related to the children's worries about their social life. We do take into consideration the preferences of the children; however, we do not weigh them as heavily in modification proceedings. *In re Marriage of Behn*, 416 N.W.2d 100,102 (Iowa Ct. App. 1987). "Deciding custody is far more complicated than asking children with which parent they want to live." *Id.* We conclude the district court properly determined Jeffory offers the children superior care and properly modified the physical care provision of the dissolution decree.

B. Child support.

Melinda argues the district court's calculation of her annual income was incorrect, and therefore her child support obligation was also improperly calculated. When determining net income, we use the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). "This often requires the court to carefully consider all of the circumstances relating to the parent's income" which can include whether a parent voluntarily reduced his

or her income. *Id.* The district court made no separate conclusion regarding whether Melinda voluntarily reduced her income and whether the sole use of her current part-time income would be unjust to the children. See *In re Marriage of McDermott*, 827 N.W.2d 671, 685 (Iowa 2013). The evidence presented by Melinda to show her actual earnings consisted of just three pay stubs from her ongoing employer from August 31 through October 14, 2012.

Instead of relying on those three paystubs, the district court used Melinda's 2011 tax return to calculate her income for child support purposes. Melinda was underemployed at the time of trial and the 2011 tax return figure included wages from a second job which she worked the year prior.¹ The court also made a credibility determination regarding Melinda's honesty about her finances. It noted that Melinda was not truthful in her answers to interrogatories nor in her testimony about the balances in her bank account, and concluded "[d]espite her testimony to the contrary, the Court finds [Melinda] has minimized her use of bank accounts and minimized the balances of her bank accounts to avoid garnishments."

"The court must determine the parent's current monthly income from the most reliable evidence presented. This often requires the court to carefully consider all of the circumstances relating to the parent's income." *Id.* "Although our review is de novo, we will defer to the trial court when valuations are accompanied with supporting credibility findings or corroborating evidence." *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). The court found Melinda was not truthful, and that she was hiding income. The 2011 tax return

¹ Melinda lost the second job after being caught for stealing from her employer.

was the most reliable source of information available. We agree with the district court that its use of the 2011 figure was proper when considering all the circumstances relating to Melinda's income.

C. Appellate attorney fees.

Jeffory requests attorney fees on appeal. "We consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal." *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). We decline Jeffory's request. Costs on appeal are divided equally between the parties.

AFFIRMED.