IN THE COURT OF APPEALS OF IOWA

No. 3-687 / 12-2299
Filed August 7, 2013

Upon the Petition of
NEAL ANTHONY TICKNOR,
Petitioner-Appellant,

vs.

DONI HARMS,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

A father appeals the district court's refusal to modify the physical placement provisions of the decree approving the parties' custody stipulation. **AFFIRMED.**

John J. Wood and Kate B. Mitchell of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

Doni Harms, Holland, appellee pro se.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

Neal Ticknor appeals the district court's denial of his petition to modify the physical care provisions of the decree approving a stipulation between Ticknor and Doni Harms regarding the custody of their minor son Parker. Ticknor claims the district court erred in finding he had not shown a substantial change in circumstances warranting modification of the care provisions. He also claims he has established himself as the superior parent. For the reasons stated below, we affirm the decision of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

Ticknor and Harms are the parents of Parker, born in 2004. Ticknor and Harms never married, and they ended their relationship by the time Parker was born. In 2004, a decree was issued approving the parties' stipulation to have joint legal custody of Parker and grant physical care to Harms, with Ticknor receiving liberal visitation rights. In 2011, the parties entered into another stipulation to increase Ticknor's visitation time considerably but leaving physical care of Parker with Harms. The district court issued an order approving this stipulation and modifying the decree.

In February 2012, there was a fire in the house in which Harms and her current fiancé were living, which forced them to live for several weeks in hotels subsidized by insurance. In April Harms moved with her fiancé and Parker to Holland in Grundy County, Iowa, nearly forty miles from Waterloo. This move required Parker to change school districts, and Ticknor claims the increased distance interferes with his visitation time and the hockey activities in which

Ticknor and Harms had agreed to encourage Parker in their 2011 stipulation. Harms made this move, moreover, without the consent of Ticknor. Ticknor filed the instant petition to modify the decree on April 24, 2012, seeking an award of physical care. The district court denied Ticknor's petition, concluding he had not met his burden to prove a substantial change in circumstances. Ticknor now appeals from that ruling.

II. SCOPE AND STANDARD OF REVIEW.

Because an action to modify a custody decree is heard in equity, our review is de novo. 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 findings of fact, especially with regard to witness credibility, but we are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Prior cases have little precedential value, as we must base our decision on the particular circumstances of the case before us. *Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa Ct. App. 1987).

In this case Harms has failed to file an appellee brief. Although this failure does not entitle the appellant to a reversal as a matter of right, we "handle the matter in a manner most consonant with justice and [our] own convenience." *Bowen v. Kaplan*, 237 N.W.2d 799, 801 (Iowa 1976). Our analysis is confined to the controverted rulings of the district court, and we will not comb the record for

an alternative ground upon which to affirm the judgment. *See State ex rel. Buechler v. Vinsand*, 318 N.W.2d 208, 209 (Iowa 1982).

III. MODIFICATION OF PHYSICAL CARE.

Courts may modify the custody or care provisions of a decree only where the record reveals "a substantial change in circumstances since the time of the decree, not contemplated by the court when the decree was entered, which was more or less permanent, and relates to the welfare of the child." *Melchiori*, 644 N.W.2d at 368. The burden is on the party seeking modification to show a substantial change by a preponderance of the evidence. *In re Marriage of Feustel*, 467 N.W.2d 261, 263 (Iowa 1991). In addition, the party seeking modification must demonstrate that he or she possesses a superior ability to minister to the needs of the children. *In re Marriage of Whalen*, 569 N.W.2d 626, 628 (Iowa Ct. App. 1997). Once a custodial arrangement is established, "it should be disturbed only for the most cogent reasons." *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). As in any custody or care determination, our paramount concern is the best interests of the child. *See In re Marriage of Bergman*, 466 N.W.2d 274, 275 (Iowa Ct. App. 1990).

On appeal, Ticknor contends the district court erred in finding he had not established a substantial change in circumstances to warrant a physical care modification. Specifically, he argues that Harms's move from Waterloo to Holland constitutes a substantial change in circumstances. He also argues he possesses a superior ability to minister to Parker's needs in light of the more stable environment he can offer. In addition, Ticknor draws our attention to other

moves by Harms in the Waterloo area and her several career changes before the order approving the parties' 2011 stipulation. Because his burden is to prove a substantial change in circumstances since the last order modifying the decree, these facts are of limited relevance to our determination. *See In re Marriage of Grantham*, 698 N.W.2d 140, 146 (Iowa 2005).

Upon our de novo review, we agree with the district court that Ticknor has not met his burden to demonstrate Harms's relocation to Holland, Iowa, constitutes a substantial change in circumstances. We have recognized a change in residence by the primary caretaker, without more, does not constitute a substantial change, but "if the reasons for moving the children and the quality of the new environment do not outweigh the adverse impact of the move on the children," a custody modification may be justified. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996). Here, Harms testified her move to Holland was precipitated by a fire in the house in which she, Parker, and her fiancé were living in Waterloo. After a period of about two months during which they resided in hotels, Harms learned she would not be able to move back into the fire-damaged house. In looking for a new home, Harms sought to find a community with smaller schools, which she believed were better suited to Parker's education. The record illustrates, and Ticknor agrees, Parker is doing well in the Grundy Center school district.

Although Harm's relocation places an additional burden on Ticknor's visitation time and Parker's ability to participate in hockey, it does not present an intolerable barrier to either. As our supreme court has recognized:

> [G]eographical proximity is not an indispensable component of joint custody, and, at least when the decree is silent on the issue, the parent having physical care of the children must, as between the parties, have the final say concerning where their home will be. This authority is implicit in the right and responsibility to provide the principal home for the children. The right would mean little if the other custodian could veto its exercise.

Frederici, 338 N.W.2d at 159–60. Although the move is not without effect on the custodial and care arrangement, the increased distance is not so great as to require an award of physical care to Ticknor. The record provides no indication the adverse impact, if any, of this relocation on Parker outweighs the substantial reasons for the move. *See Dale*, 555 N.W.2d at 245. In relocating to Holland, Harms acted within her authority as the primary caregiving parent to determine where the child's home will be. We conclude Ticknor has not carried his burden to demonstrate that this move constitutes a substantial change in circumstances.

Harms's relocation, without more, is not so substantial a change in circumstances to constitute a "most cogent reason" to modify the decree. *See Frederici*, 338 N.W.2d at 158. Because we find no substantial change in circumstances warranting a modification of the decree, we need not address Ticknor's claim that he has a superior ability to care for Parker. Accordingly, we affirm the district court's denial of Ticknor's petition.

AFFIRMED.