IN THE COURT OF APPEALS OF IOWA

No. 0-328 / 09-1876
Filed June 16, 2010

IN RE THE MARRIAGE OF ANGELA M. WEILAND AND MICHAEL A. WEILAND

Upon the Petition of

ANGELA M. WEILAND,
Petitioner-Appellee,

And Concerning

MICHAEL A. WEILAND,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge.

Michael Weiland appeals from the district court order concerning child custody, visitation, and support. **AFFIRMED.**

Dawn D. Long of Howes Law Firm, P.C., Cedar Rapids, for appellant.

Guy P. Booth, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

SACKETT, C.J.

Michael A. Weiland and his former wife Angela M. Weiland are the parents of a son and daughter born in 1998 and 1999. Michael appeals challenging the district court's ruling addressing issues he raised in an application asking the court to set a care schedule and child support for the children. We affirm.

BACKGROUND AND PROCEEDINGS. A judgment of divorce terminating the marriage of Michael and Angela was entered in Wisconsin in October of 2000. The court awarded both parties joint legal custody of their two minor children. Primary placement of the children was awarded to Angela "with periods of physical placement as set forth in a Marital Settlement Agreement to Respondent [Michael]." In January of 2005 the Wisconsin judgment of divorce was filed with the Iowa District Court for Linn County where, in February of that year, Michael sought a modification of the Wisconsin judgment of divorce. The parties stipulated on a resolution of the action, which the district court on July 31, 2006, approved and made a part of its order. The stipulation noted Angela, who was moving to Algona, Iowa, should have primary physical care of the children, but that both parents should share joint legal custody and Michael should have certain specified visitation. The stipulation further provided:

> The parties agree that in the event the Petitioner [Angela] moves back to the Cedar Rapids or surrounding area, the parties agree to operate under a shared physical care custody arrangement. The parties will work together to modify this agreement to provide for appropriate division of expenses for the children, child support and any other issues that may need to be resolved as a result of switching to a shared care arrangement.

On September 30, 2009, Michael filed the application that leads to this appeal. He contended that Angela had moved to Cedar Rapids, Iowa, that the

provision of their stipulation above should prevail, and that the court should enter a specific schedule.[1] The matter came on for hearing on October 11, 2009. Both parties appeared and testified and by agreement submitted affidavits and exhibits.

Michael took the position that the July 31, 2006 order provided for an automatic change in custody to shared care on Angela's return to Cedar Rapids and that the court should only establish a care schedule. The district court rejected Michael's position, citing *In re Marriage of Thielges*, 623 N.W.2d 232 (Iowa Ct. App. 2000), and finding it was not bound by the mandatory "shared care" provision of the July 31, 2006, stipulation. The court did find that Angela's move from Algona to Cedar Rapids was a substantial change in circumstances that could serve as a basis for modifying custody and visitation. The court found, however, that the children would be required to commute excessively to school and other activities if they were in Michael's home in Monticello and Angela's in Cedar Rapids on alternate weeks and this would not be in the children's best interest. The court then found that Angela should retain primary physical care but that the change created by Angela's move to Cedar Rapids is a change that should afford Michael more parenting time with the children. The court then found that the children should spend three weeks out of every four weeks during the school year living with Angela and during the summer they should spend three weeks out of every four weeks living with Michael.

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[1] Michael lives in Monticello, Iowa, which is about thirty-five miles from Cedar Rapids, Iowa, and about 220 miles from Algona, Iowa. At the time of the hearing both children attended school in Cedar Rapids.

The court found Michael's annual income for purposes of determining the child support obligation was $49,000 and Angela's was $38,634. The court found Angela's net monthly income to be $2690.54 and Michael's to be $3024.95. Michael's child support obligation was set at $623.67 monthly. Each party was ordered to pay their own attorney fees and court costs were divided evenly between the parties.

MICHAEL CONTENDS THE DISTRICT COURT ERRED IN MODIFYING CUSTODY. Michael contends the district court erred in not enforcing the custody and care provisions of the July 31, 2006 decree. He further contends the district court erred in finding there had been a substantial change of circumstances that warranted a change in parenting time. He also contends the district court erred in determining Angela could provide care to the children superior to the care they would receive in a joint physical care arrangement. Michael, while recognizing that Iowa Code section 598.21D (2009) provides a move of 150 miles or more can be found to be a change in circumstances, does not believe it applies here because, while Angela moved more than 150 miles, it was a move closer to Michael not a move farther away.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.907 (2009). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Kleist*, 538 N.W.2d 273, 276 (Iowa 1995). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 6.904(3)(*g*). Courts are empowered to modify the custodial terms of a

dissolution decree only when there has been a substantial change in circumstances since the time of the decree not contemplated by the court when the decree was entered, which is more or less permanent and relates to the welfare of the child. *Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002); *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996). The parent seeking to change physical care from the primary custodial parent to joint physical care has a heavy burden. *Melchiori*, 644 N.W.2d at 368; *In re Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa Ct. App. 1998). Part of our focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs. *See In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). The children's welfare is our paramount consideration. *See* Iowa R. App. P. 6.904(3)(*o*).

We agree with the district court that both parties are excellent parents and concerned with their children's welfare. The modified order, which Angela does not challenge, gives Michael more time with the children than he had when they lived in Algona. While we recognize that the parties entered a stipulation that was approved by the district court that there should be shared physical care if Angela moved to Cedar Rapids, we do not accept Michael's argument that we are required to enforce the provisions of that approved stipulation. We do view it as a factor to consider and we have considered it. However, we do not see joint physical care to be in the children's interest where they have been in their mother's primary care and they will face a long commute to the Cedar Rapids school district when with their father. We therefore affirm the district court.

CHILD SUPPORT. Michael contends the child support fixed was too high, as the court did not consider the $4025.44 in health insurance Michael pays (family minus single). While making this statement Michael does not show us the calculations for the support he contends he should pay, nor does he advance an amount of support he contends he should pay. Angela does not respond to this claim. Michael's Child Support Guidelines Worksheet filed with the district court calculated his guideline amount of child support at $619.27. The district court fixed his child support at $623.67. We find no reason to modify the child support ordered.

ATTORNEY FEES. Both parties seek an award of appellate attorney fees. We award Angela $500 in appellate attorney fees. Costs on appeal are taxed to Michael.

AFFIRMED.