

**IN THE COURT OF APPEALS OF IOWA**

No. 1-357 / 10-1692  
Filed June 29, 2011

**CRAGER J. COOK,**  
Petitioner-Appellee,

**vs.**

**HOLLIE LAMPE f/k/a  
HOLLIE THOMPSON,**  
Respondent-Appellant.

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

A mother appeals a district court's modification order granting physical care of the parties' child to the father. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West Des Moines, for appellant.

Lana L. Luhring of Laird & Luhring, Waverly, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

**DOYLE, J.**

Hollie Lampe (formerly Hollie Thompson) appeals the district court order modifying a child custody order and granting Crager Cook physical care of the parties' son. Hollie contends the district court should have awarded her physical care. Crager requests appellate attorney fees. We affirm, and deny Crager's request for appellate attorney fees.

***I. Background Facts and Proceedings.***

Hollie and Crager are the parents of Caden, born in 2005. Hollie and Crager never married. In 2007, Hollie moved to Chicago, Illinois, while Crager remained in Waterloo, Iowa. On September 19, 2007, based upon the parties' stipulation, the district court entered an order granting the parties joint legal custody of Caden with shared physical care. The parties' stipulation provided that the parties would alternate care of Caden each month. Additionally, the stipulation stated the parties acknowledged their agreement would need to be revisited when Caden reached school age.

In February 2009, Hollie reconnected via the Internet with Eric Lampe, an old school acquaintance. Eric is a captain in the Army and the father of a daughter who was four years old at the time of the trial. Hollie and Eric continued to communicate by the Internet and webcam. In April 2009, Hollie and Caden flew to Arizona to meet Eric and his daughter. Hollie and Eric met in person two more times before becoming engaged in September 2009. They married in December 2009.

In February 2010, Eric's daughter moved in with Hollie. At that time, Eric was stationed at Fort Carson in Colorado. Hollie planned to remain in Chicago

for the 2010-11 school year and then move to Fort Carson thereafter. Although nothing formal was in the works, Hollie anticipated Eric would be relocated to a different post in three to five years and she and the children would relocate with him.

Crager continued to reside in the Waterloo area with his girlfriend of three years. Crager's parents and brother also live in the area. Caden had regular contact with his paternal grandparents when visiting Crager, and Caden has a close bond to his paternal grandparents.

On January 19, 2010, Hollie filed a petition to modify the custody order, requesting Caden be placed in her physical care. Hollie's petition stated the parties had been alternating care of Caden each month. However, because Caden was now close to starting school, Hollie asserted the custody and visitation provisions of the order needed to be modified. Crager answered the petition, agreeing the custody order needed to be modified but requesting Caden be placed with him.

Following an August 2010 trial, the district court modified the custody, visitation, and support provisions of the custody order. The court found there had been a substantial change of circumstances warranting modification and that the stability in Crager's home would "provide Caden with the environment most likely to bring him to a healthy physical, mental, and social maturity." The court ordered primary physical care of Caden be placed with Crager, set a minimum visitation schedule, and ordered Hollie to pay child support.

Hollie now appeals.

## **II. Scope and Standards of Review.**

We review custody orders de novo. Iowa R. App. P. 6.907 (2009). However, the district court had the advantage of listening to and observing the parties and witnesses. See *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Our overriding consideration is the best interests of the child. Iowa R. App. P. 6.904(3)(o).

## **III. Discussion.**

### **A. Physical Care.**

Typically, when an original custody order is modified, the party seeking modification must prove a material and substantial change in circumstances. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). When the modification would mean that one parent receives physical care, that parent must also demonstrate an ability to minister more effectively to the child's well-being. *Id.*

Since the entry of the original custody order in 2007, the parents have shared equally the physical care of the child. However, the parties agree that, due to their distance and the child's upcoming enrollment in school, joint physical care is no longer workable. Therefore, there has been a substantial change in circumstances necessitating modification of the original decree. See *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996) (stating the "particular

circumstances surrounding a change in residence may ultimately support a change in” physical care).

Consequently, we address this as an initial custody determination where the issue is which parent can render better care. See *Melchiori v. Kooj*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002). In making this physical care decision, the district court is guided by the factors enumerated in Iowa Code section 598.41(3) (2009), as well as other nonexclusive factors enumerated in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The ultimate objective of a physical care determination is to place the child in the environment most likely to bring him to healthy physical, mental, and social maturity. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). As each family is unique, the decision is primarily based on the particular circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 699 (Iowa 2007).

Hollie argues that she should have been granted physical care of Caden. Hollie asserts she is the better parent, to which Crager responds that he is the best parent. The evidence at trial demonstrated both Hollie and Crager are good parents who love their well-adjusted child. Both parents have been very involved since Caden’s birth, and both have played a significant role in Caden’s education and activities and have taken Caden to the doctor.

The district court noted that both parents had issues with communication and found that improvement was needed by both parents. The court acknowledged both parties agreed “the other party is fully capable of providing for Caden’s needs.” However, the court found Crager could provide Caden a more stable environment.

Upon our de novo review, we find this to be a close and difficult decision, but we agree with the district court's conclusion. There is no doubt both parents love Caden and can provide equally for his care, as they have been doing for a number of years. Given the objective of a physical care determination, to place the child in the environment most likely to bring him to healthy physical, mental, and social maturity, we believe the stability offered by Crager, coupled with Caden's close relationships with Crager's extended family in northeast Iowa, as well as Crager's sensitivity and attentiveness to Caden's medical needs, tip the scales in favor of awarding Caden's physical care to Crager. Accordingly, we affirm the district court's order modifying the parties' child custody order and granting Crager physical care of the parties' son.

***B. Appellate Attorney Fees.***

Crager requests an award of appellate attorney fees. We enjoy broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In exercising this discretion, we consider several factors: the financial needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* We decline to award appellate attorney fees in this case. Costs are assessed to Hollie.

**AFFIRMED.**