IN THE COURT OF APPEALS OF IOWA

No. 3-137 / 12-1116
Filed April 10, 2013

JEFFREY YATES,
Plaintiff-Appellee,

vs.

TESSA PAIGE KNOBLAUCH,
Defendant-Appellant.

Appeal from the Iowa District Court for Cedar County, Mark D. Cleve, Judge.

A mother appeals from the order modifying a stipulated order on paternity, custody, visitation, and child support. **AFFIRMED.**

Lauren Phelps, Davenport, for appellant.

Robert Gallagher, Bettendorf, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

A mother appeals from the order modifying a stipulated order on paternity, custody, visitation, and child support that provided for joint physical care. She contends (1) the court erred in finding the father was the more mature and responsible parent, (2) granting physical care to the father is not in the child's short-term or long-term best interests, and (3) the court erred in finding a substantial change in circumstances and not following the original order. We affirm.

Background. The parties are parents of a child born in 2007. After they separated in 2009, the court entered a stipulated order on paternity, custody, visitation, and child support. The order provided for joint legal custody and joint physical care. The child alternated between parents weekly. At the time of the order the parties resided in adjoining counties—the father in Cedar County and the mother in Scott County. The order also provided for automatic review when the child approached school age.

In July 2011 the father filed an application to modify physical placement, alleging changes in circumstances and requesting physical care of the child. In August the mother filed a response, also seeking physical care of the child. The matter came on for contested hearing in April 2012.

The court noted both parents were good parents who love and care deeply about the child. Comparing the parents, the court found the father more mature and responsible. It noted his marriage, the close bond between his wife and the child, and the strong and healthy sibling relationship between the child

and the younger half-sibling. The court concluded the custodial order should be modified to award physical care to the father. The mother appeals.

Scope of Review. Our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006). We examine the entire record and decide anew the legal and factual issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). "However, we recognize that the district court was able to listen to and observe the parties and witnesses." *In re Marriage of Gensley*, 777 N.W.2d 705, 713 (Iowa Ct. App. 2009). Consequently, we give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(g).

Merits. Once a physical care arrangement is established, the party seeking to modify it bears a heightened burden, and we will modify the arrangement only for the most cogent reasons. *See Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996).

> [T]he applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. 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. They must relate to the welfare of the children.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983). If the parent seeking to modify custody has shown a substantial change in material circumstances, we then consider whether the parent has shown "an ability to minister more effectively to the children's wellbeing." *Id.* Where the existing

custody arrangement provides for joint physical care, as is the case here, the court already has deemed both parents to be suitable custodians. *See Melchiori v. Kooi*, 644 N.W.2d 365, 368-69 (Iowa Ct. App. 2002). The question then is which parent can render "better care." *Id.*

A. Substantial Change in Circumstances. The mother contends the court erred in finding a substantial change in circumstances and in not following the provisions of the original custody order.

The original order provided:

> IT IS FURTHER ORDERED by this Court that this Order shall be reviewed by the parties in June 2011 prior to the time when [the child] will begin formal schooling. It is contemplated by the parties that [the child] will continue to reside in Davenport and attend school in Davenport. If the parties cannot agree on a custodial arrangement and visitation to begin when [the child] begins formal schooling, said disagreement in and of itself shall represent a substantial change in circumstances not contemplated at the time of the entry of this Order. Either party shall have the right to petition the Court to modify this Order should the parties not reach an agreement on how to parent [the child] when she begins formal schooling.

The trial court considered and rejected this language, concluding "it purports to create an 'automatic' review of the custodial order which does not meet the criteria specified in *In re Marriage of Vandergast*, 573 N.W.2d 601, 603 (Iowa Ct. App. 1997), and *In re Marriage of Schlenker*, 300 N.W.2d 164, 165-66 (Iowa 1981)."

We agree the first sentence attempts to create an automatic review of the order without a requirement of a substantial change in circumstances. *See Vandergast*, 573 N.W.2d at 603 (holding any provision allowing for review of child custody without requiring a substantial change in circumstances requires a

finding "the case is within the exceptional circumstances" contemplated in *Schlenker*); *see also Schlenker*, 300 N.W.2d at 165-66 (noting trial courts should decide cases on the circumstances at the time and only in "exceptional circumstances" "unequivocally" provide for review without a showing of a substantial change in circumstances). However, in this case, the review was not based on any provision of the stipulated order, but was on the father's application for modification alleging a substantial change in circumstances.

Since the original order the father has married and had a child. At the time of the modification proceedings, he was in the process of moving farther away from the mother's residence in order to take a higher paying job. Before applying for modification, the father lived in Clarence, Iowa, and the mother lived in Davenport. The father planned to move to Cedar Rapids, which would nearly double the distance between the parents. There is also some evidence the parents are less able to communicate and agree on parenting choices and the child's activities. We conclude the father demonstrated a material and substantial change in circumstances not contemplated by the court at the time of the original order. *See Pals*, 714 N.W.2d at 646.

B. Superior Care. We next consider whether the father has shown the ability to offer superior care.[1] *See In re Marriage of Brown*, 778 N.W.2d 47, 51 (Iowa Ct. App. 2009). The mother lives in a two-bedroom home she shares with another woman and her infant son. During the week when the child is not in her care, she lives at another location with her boyfriend. The father offers stable

[1] The mother frames the issue more narrowly, challenging only the court's finding the father is "more mature and responsible," which was only one factor the court considered.

routine and structure, a two-parent home with a strong established bond between the child and the step-mother, strong sibling relationships, involvement of extended family, and a home solely for the family. He is responsible and working hard to provide for his family. We conclude the balance tips in favor of the father and demonstrates his ability to offer superior care.

C. Best Interests. The mother contends granting physical care to the father is not in the child's immediate or long-term best interests. She argues the court did not properly consider the factors set out in Iowa Code section 598.41(3) (2011) and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974).

Many of the factors listed in section 598.41(3) have no application to the circumstances before us. Those that apply do not strongly favor either parent. Turning to the factors in *Winter*, we conclude the father can provide more stability and has a greater capacity to provide for the child's emotional, social, moral, material, and educational needs. *See Winter*, 223 N.W.2d at 166. The father's home also gives the child the benefit of a close sibling relationship and a close relationship with both parents in the home. *See id.*

The mother challenges the court's credibility determination and resulting conclusion both parents would be able to address the child's questions and concerns related to her mixed-race heritage[2]. We defer to the court's credibility determinations because it had the ability to hear the witnesses and observe their demeanor. *See In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984); *see also Gensley*, 777 N.W.2d at 713.

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[2] One of the child's maternal great grandparents is African-American.

We, like the trial court, conclude placing the child with the father best serves her immediate and long-term best interests.

AFFIRMED.