IN THE COURT OF APPEALS OF IOWA

No. 8-843/ 08-0551
Filed December 31, 2008

**IN RE THE MARRIAGE OF GORDON FRANCES GOOLEY, JR.
AND ZANTHYE IMOGENE GOOLEY**

**Upon the Petition of
GORDON FRANCES GOOLEY, JR.,**
Petitioner-Appellee,

**And Concerning
ZANTHYE IMOGENE GOOLEY,
n/k/a ZANTHYE IMOGENE GREER,**

Respondent-Appellant.

Appeal from the Iowa District Court for Lee County (South), John G. Linn, Judge.

Mother appeals from the district court's ruling modifying the physical care and child support provisions of the parties' dissolution decree. **AFFIRMED.**

David Burbidge of Johnston & Nathanson, P.L.C., Iowa City, for appellant.

Bruce C. McDonald of McDonald Law Office, Keokuk, for appellee.

Heard by Vaitheswaran, P.J., Doyle, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.

Zanthye Greer (formerly Zanthye Gooley) appeals from the district court's ruling modifying the custody and support provisions of the parties' dissolution decree. She contends the district court erred in awarding Gordon Gooley primary care of the parties' daughter. She objects to the resultant child support determination and seeks an award of appellate attorney fees. We affirm.

I. Background Facts and Proceedings.

Zanthye Greer (Zan) and Gordon Gooley are the parents of a daughter born in October 2003. Zan and Gordon's March 2003 marriage was dissolved by stipulated decree on July 28, 2005. The dissolution decree awarded the parties joint legal and physical custody of the child and visitation. The child resided with Zan from 9 p.m. on the first of each month to 9 a.m. on the sixteenth of each month and with Gordon the remainder of each month. Gordon was to pay eighty-eight dollars per week in child support and seventy-five percent of all medical expenses not covered by insurance. Gordon was awarded visitation from 9 a.m. to 5 p.m. on the second Sunday of each month; Zan was awarded visitation from 9 a.m. to 5 p.m. on the fourth Sunday of each month. Gordon was entitled to claim the dependency exemption on his taxes provided he was current on his child support obligations.

On April 16, 2007, Gordon sought a modification of the decree seeking physical care of the child. He alleged Zan was attempting to destroy his relationship with their child by making false and unfounded reports to the Iowa Department of Human Services (DHS); Zan had made repeated contacts with

law enforcement; Zan had stalked and surveilled him; and Zan had engaged in "bizarre and unstable behavior inimical to the best interests" of the child.

Following a hearing, the district court prepared a lengthy and detailed ruling. We share this critical portion of that ruling.

> The trial record contains ample evidence demonstrating that Zan is attempting to destroy Gordon's relationship with [the child]. She has stalked and spied upon him. Zan has created disturbances at Gordon's apartment and at the apartment[s] of several babysitters. Zan has made false claims to DHS workers, medical providers, and law enforcement. Although many of these events occurred prior to the final decree, the actions are still relevant because they prove Zan's personality defects and negative characteristics.
>
> Clearly, the parties are unable to communicate. This is probably a mutual problem. Gordon claims Zan simply wants to dictate terms and conditions to him. Zan claims Gordon will not listen and either hangs up the phone, or if they are talking face-to-face, walks away. Gordon claims he must do this because Zan becomes agitated and argumentative. Both parties need to attempt to communicate better, but his may be a foregone conclusion that they simply will not.
>
> The only testimony alleging that Gordon is a bad parent was through Zan, and somewhat by proxy, through April Dirks. April Dirks assumes that [the child's] claims are the truth. If [the child] makes these claims because of blatant or passive coaching, then Gordon is being framed. However, it is noteworthy that Zan was unable to call any supporting witnesses who would verify that Gordon is somehow a bad parent. Even Zan's parents did not testify. This is important because Gordon claims to have a decent relationship with Zan's father. In fact, Gordon still uses Zan's parents, albeit sparingly, to babysit [the child].
>
> When the entire record is carefully reviewed, it is the Court's conclusion, by the greater weight of the evidence, that Gordon is not sexually abusing [the child]. Zan's claims are either a blatant fabrication or a result of misguided, mistaken thinking on Zan's part. Zan may believe that Gordon is committing sexual abuse, and she repeats these claims in such a way that [the child] now believes it. This is unfortunate and must stop. Zan is attempting to destroy [the child's] relationship with Gordon.
>
> The Court concludes a substantial change of circumstances has occurred. Gordon has a superior, permanent claim to minister more effectively to the present and future needs of [the child].

> Accordingly, the Court concludes Gordon shall be awarded physical care of [the child].

The district court also granted Gordon's request that future visitation between mother and child be supervised. Noting that restrictions on parental visitation were only proper in limited circumstances, the court provided:

> Based on Zan's well-documented history of interfering with Gordon's relationship with [their daughter], and the Court's conclusion that Zan is either coaching [the child] or that Zan truly believes (although this is a mistaken, false belief) that Gordon is sexually abusing [the girl], the Court concludes Zan's visitation with [the girl] shall be supervised by at least one of Zan's parents. . . . The requirement of supervision may be reviewed and modified after Zan has undergone a mental evaluation, including treatment, and at such time that a psychiatrist will verify in writing that unsupervised vistitation . . . is not likely to result in direct physical harm or significant emotional harm to [the child].

As a result of the modification of custody, the district court modified the support provisions of the dissolution decree in accordance with the parties' incomes.

Zan now appeals. She repeats her allegations of Gordon's misbehavior and asks that she—not Gordon—be awarded physical care of the parties' child.

II. Standard of Review.

Our standard of review in this equitable proceeding is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales,* 592 N.W.2d 698, 702 (Iowa Ct. App. 1999). We give weight to the district court's findings of fact, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Modification of Custody.

To change the custody set by a dissolution decree, the party seeking modification must establish by a preponderance of the evidence conditions have so materially and substantially changed since the decree that the child's best interests make the requested change expedient. *In re Marriage of Moore,* 526 N.W.2d 335, 337 (Iowa Ct. App. 1994). This requires that the parent seeking to take custody from the other prove an ability to administer more effectively to the child's needs. *In re Marriage of Whalen,* 569 N.W.2d 626, 628 (Iowa Ct. App. 1997).

We agree with the district court that there has been a substantial change in circumstances warranting a modification of the joint physical care of the parties' child. The district court found Zan lacked credibility. Based upon our de novo review of the record, we give weight to that finding of lack of credibility. Zan has systematically attempted to destroy the relationship between father and daughter: she has made numerous allegations of abuse to the DHS;[1] DHS workers have on numerous occasions found Zan not to be credible; the parties' child has been subjected to at least four genital examinations by four different physicians, with none finding there was conclusive evidence of sexual abuse; Zan has insisted her daughter be catheterized to check for drugs or alcohol in the girl's system, and was apparently upset when the results were negative; Zan has made numerous false accusations about, and interfered with, childcare providers selected by Gordon; Zan moved the girl to a different town without telling Gordon

[1]The only finding of inappropriate behavior was when Gordon admittedly gave the girl a small amount of beer believing it would help ease the pain of teething.

of the move; and Zan enrolled the girl in preschool without informing Gordon. These actions are not in the best interests of the child.

On the other hand, while not a perfect parent, Gordon has been cooperative with the many DHS investigations; DHS has made visits to his home, announced and unannounced, and workers found Gordon interacted well with his daughter and provided a suitable home; Gordon has provided a stable home for his daughter, with appropriate childcare. We, like the district court, conclude Gordon has proved his ability to administer more effectively to his daughter's needs.

We affirm the award of physical care to Gordon,[2] as well as the consequent child support award.

IV. Attorney Fees.

Both parties seek an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We determine Zan should pay $1500 toward Gordon's appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Zan.

AFFIRMED.

[2] We note there has been no challenge to the condition that visitation between mother and daughter be supervised until such time as Zan undergoes mental health evaluation and treatment.