IN THE COURT OF APPEALS OF IOWA

No. 1-801 / 01-0201
Filed December 28, 2001

IN RE THE MARRIAGE OF JAMIE R. BUCKMEIER AND GRETCHIN L. BUCKMEIER

Upon the Petition of
JAMIE R. BUCKMEIER,
Petitioner-Appellant,

And Concerning
GRETCHIN L. BUCKMEIER, n/k/a
GRETCHIN L. BUCKMEIER-GENTZ,
Respondent-Appellee.

FILED
DEC 28 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Winnebago County, Jon S. Scoles, Judge.

Petitioner Jamie Buckmeier appeals from a district court order modifying the custody provisions of the parties' dissolution decree. **AFFIRMED.**

Kristy B. Arzberger of Arzberger Law Office, Mason City, for appellant.

Robert J. Reding of Fritz & Reding Law Offices, Lake Mills, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

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MAHAN, J.

Petitioner Jamie Buckmeier appeals from a district court order modifying the custody provisions of the parties' dissolution decree. He contends the court erred in granting primary physical care to the respondent, Gretchin Buckmeier-Gentz. We affirm.

Background Facts and Proceedings. Jamie and Gretchin Buckmeier were married in July 1993. They are the parents of Brianna, born April 11, 1997. The parties separated in October 1998, and their marriage was dissolved on July 16, 1999. The decree of dissolution incorporated the parties' stipulation, which provided Jamie and Gretchin would have joint legal custody and joint physical care of Brianna. By agreement of the parties, the decree also provided the parties would live in the Forest City school district. The parties further agreed, somewhat unrealistically, if one party moved the other would also make an effort to relocate.

In May 2000 Gretchin provided Jamie with notice she planned to move from the area to be with her fiancé. In June 2000 Jamie filed a petition to modify the decree claiming there had been a substantial change in circumstances and that primary physical care of the child should be awarded to him. Following a trial the district court entered a ruling in January 2001 modifying the decree by awarding primary physical care of the child to Gretchin and providing Jamie with a regular visitation schedule. Jamie appeals.

Standard of Review. Our review of child custody modifications is de novo. *In re Marriage of Fox*, 559 N.W.2d 26, 28 (Iowa 1997). We give weight to

the trial court's fact-findings, particularly when considering the credibility of witnesses, but they do not bind us. *Id.*

Modification of Custody. The court can modify custody only when there has been a material and substantial change in circumstances since the time of the decree that was not contemplated when the decree was entered. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa Ct. App. 1998). The change must be more or less permanent and relate to the welfare of the children. *Id.* The burden to modify custody provisions is a heavy burden. *In re Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa Ct. App. 1998). The question is not which home is better, but whether the parent seeking modification can offer the children superior care.[1] *In re Marriage of Whalen,* 569 N.W.2d 626, 628 (Iowa Ct. App. 1997). Therefore, the parent seeking custody must prove an ability to minister more effectively to the child's well-being. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996).

There is no disputing that there has been a material and substantial change in circumstances. If a parent having physical care of the child is moving more than 150 miles, the court may consider the relocation a substantial change in circumstances. Iowa Code § 598.21(8A) (1999). As a result, Gretchin's move to Le Mars, which is 170 miles from Forest City, is a material and substantial change in circumstances, and it will prevent the parties from continuing the shared physical care arrangement set forth in the original decree.

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[1] This "superior care" factor was not considered in this case since the parties had previously agreed to a shared care agreement.

The question on appeal is whether the court erred in granting primary physical care of the child to Gretchin. As in all cases involving the question of custody, our first consideration in proceedings to modify custody is the best interests of the child. *Dale*, 555 N.W.2d at 245. "In determining which parent serves the child's best interests, the objective is to place the child in an environment most likely to bring the child to healthy physical, mental, and social maturity." *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996).

After careful consideration of all of the evidence, the district court concluded:

> The court believes both parties love Brianna and have a strong bond with her. In addition, the court concludes that both parties are able to provide for Brianna's physical needs. After considering all the facts and circumstances, however, the court concludes that Gretchin is better able to provide for Brianna's long-term physical and emotional needs.

Upon de novo review of the record, we defer to the district court's credibility findings and reach the same conclusion. Accordingly, we affirm the district court's ruling.

AFFIRMED.