

IN THE COURT OF APPEALS OF IOWA

No. 5-589 / 94-2038

Upon the Petition of

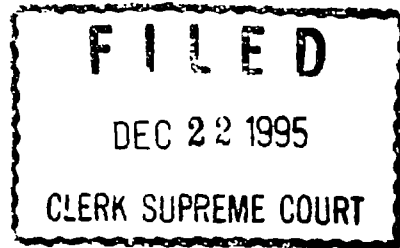
JEFFREY W. MERFELD,

Petitioner-Appellant.

And Concerning

JUDITH ROLING.

Respondent-Appellee.



Appeal from the Iowa District Court for Dubuque County, William G. Klotzbach, Judge.

Jeffrey W. Merfeld challenges the order denying his application for modification of a child custody decree. **AFFIRMED.**

William J. Jacobs of Legal Services Corp., Dubuque, for appellant.

Mark S. Beckman of Fitzsimmons, Beckman & Gilloon, Dubuque, for appellee.

Heard by Habhab, P.J., Cady, J., and McCartney, S.J.*

* Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, P.J.

Jeffrey Merfeld and Judith Roling are the parents of Ashley Roling, born March 8, 1989. On April 29, 1994, upon Jeffrey's petition, the district court granted the parties joint custody of Ashley, with Judith taking primary physical care, and an allowance to Jeffrey of extensive visitation. Primary physical care was not an issue, as Jeffrey agreed it should be given to Judith. Judith appealed the joint custody provision of the decree. The district court was affirmed on appeal by this court.

On June 25, 1994, Judith moved to Austin, Texas. At her request, she was transferred by her employer, Target Department Stores. She apparently received the same salary, but had the opportunity to obtain additional education and thereby achieve advancement. By a letter dated June 28, 1994, Judith informed Jeffrey of the move.

Jeffrey filed a petition for modification of the child custody decree on July 8, 1994. He sought to have the court transfer physical custody of Ashley from Judith to himself. The court concluded Jeffrey failed to prove by a preponderance of the evidence Judith's move to Texas substantially affected Ashley's best interest, necessitating a change in physical custody. It found Judith's move to Texas was for "good economic reasons."

Jeffrey appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Jeffrey contends the district court erred in failing to modify the primary physical care provision of the parties' dissolution decree.

To change a custodial provision of a dissolution decree, the 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. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citing *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980)). We find Jeffrey has not met this heavy burden.

As was stated previously, Jeffrey must show by a preponderance of the evidence there has been a material and substantial change in circumstances since the original decree was entered. *See id.* Essentially, Jeffrey is contending Judith's move to Texas satisfies this burden.

A parent who is granted primary physical care should not be prevented from moving to another city unless there is a specific showing the move would be against the child's best interest. *In re Marriage of Smith*, 491 N.W.2d 538, 541 (Iowa App. 1992). "[T]he parent having physical care of the children must, as between the parties, have the final say concerning where their home will be. This authority is implicit in the right and responsibility to provide the principal home for the children." *Frederici*, 338 N.W.2d at 159. The right to provide the principal home would be meaningless if the other parent could prohibit its exercise. *Smith*, 491 N.W.2d at 541.

Jeffrey has failed to show the move to Texas would not be in the child's best interest. Miriam Cruz, the personnel manager for Target in Dubuque, testified Judith approached her about career advancement within Target. Cruz stated that in order to advance, Judith would have to move away from Dubuque. Jill Atkins, the merchandise team leader at the Dubuque Target, testified if Judith wanted to stay in the area and get a promotion, she would have to move from Iowa to Illinois, to Wisconsin, and back to Iowa; whereas, if she moved to Austin, she would not have to move from city to city or state to state. Clearly, the move to Austin would both provide Judith with the opportunity for advancement and the child with some stability. In addition, the move provided Judith and the child a city where Judith had family who could help her out.

We find Jeffrey has not met his heavy burden of providing the most cogent reasons for modifying custody. Upon consideration of all arguments raised by the parties on appeal, we affirm the ruling of the district court.

AFFIRMED.