

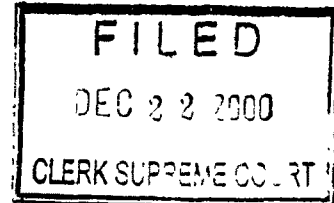
IN THE COURT OF APPEALS OF IOWA

No. 0-661 / 00-0366
Filed December 22, 2000

Upon the Petition of
KEVIN LEROY COOK,
Petitioner-Appellant,

vs.

and Concerning
TERESA LYNN COOK,
Respondent-Appellee.



Appeal from the Iowa District for Wapello County, James P. Rielly, Judge.

Petitioner-Appellant appeals the trial court's decision affecting child custody provisions of the dissolution decree of the parties. **AFFIRMED.**

R.E. Breckenridge of Johnson, Hester, Walter & Breckenridge, Ottumwa,
for appellant.

Steven E. Goodlow, Albia, for appellee.

Considered by Sackett C.J. and Hecht, J. and Honsell, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (1999).

HONSELL, S.J.

Petitioner-Appellant Kevin Leroy Cook appeals from a modification order awarding physical care of the parties' children to Respondent-Appellee Teresa Lynn Cook. We affirm.

I. Background Facts and Proceedings.

The parties are the parents of two children, Cody L. Cook, born December 26, 1989; and Casey L. Cook, born February 17, 1992. The parties were divorced on August 26, 1996. The dissolution decree incorporated their agreement. It provides that they are to have joint physical and legal custody of the children. Pursuant to its terms each parent had physical custody of the children every other week. Prior to the divorce, Teresa had provided for the physical care of the children for ten months.

The parties exchanged the children until November of 1997, when Teresa, being concerned with observed behavioral problems of the children, asked Kevin if the children could reside with her, with Kevin having regular visitation, so that they would not be disrupted every week. When Kevin declined, Teresa agreed to the children living with him and Teresa having regular visitation. This arrangement commenced November 18, 1997, continued until June of 1998, when the shared physical custody resumed.

On June 11, 1998, Kevin filed an application to modify the dissolution decree seeking: primary physical care of the children; child support to be paid by Teresa; and striking the provision in the dissolution decree mandating that the children attend school in the Ottumwa school district. Teresa filed her answer

and application to modify on June 24, 1998 seeking physical custody of the children with child support to be paid by Kevin.

On March 29, 1999, pursuant to a hearing being scheduled on Kevin's application; the court provided that he was to have temporary physical care of the children and Teresa was to have visitation. From that time to the time of trial Teresa exercised her rights of visitation. Trial was had on December 26, 1999, and the trial court's decision was filed January 5, 2000.

Kevin is employed outside of the home on a forty-hour per week basis. Additionally, his work demands that he must be away from home from Sunday evening to Thursday evening about twelve weeks per year. Teresa also works outside of the home from 6:15 a.m. to 2:45 p.m. five days a week and sometimes five hours on Saturday.

During January 1999 Kevin married Lisa Grier. At the time of trial Lisa was not employed outside of the home. She was previously employed at Wal-Mart for ten years, leaving that employment during 1999.

Two child custody evaluations were made available to the trial court. Both evaluations tend to support the following conclusions. Both children are well adjusted. Both parents provide for the material needs of the children. Both parents place a lot of emphasis upon their role in the lives of the children. Both parents enjoy good health. Each parent has the capacity and interest to and has provided for environmental, social, moral, material and educational needs of the children. There is a strong bond between the children. Each child enjoys a strong bond with each parent. Each child is open with each parent. The change

of physical custody of the children every week is not in their long-term best interests, or is "clumsy and unworkable."¹

During October of 1999 Cody was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Also noted at that time was the following: "Social stressors. The ongoing custody battle between his parents certainly produces a stress on Cody which may impact his behavior."² Cody has been on medication since about November 1, 1999. Kevin declined to start medication for ADHD as soon as requested. When testifying at trial he didn't know what medication Cody is on. He did not inform Teresa about the diagnosis or the medication. He did not provide Teresa with the medication when she first had Cody for visitation.

The parties rarely communicated during the seven months Kevin had the children. Both parties' testimony at trial conflicts in several areas that impact the factors relevant to the custody issue, e.g., swearing in the presence of the children; telephone contact with the children by Teresa; denial of contact with maternal relatives when incidental meeting occurred; denial of reasonable extra visitation requests made by Teresa; and contact by Teresa on the birthday of a child. The trial court had the opportunity to observe this testimony and the person testifying at the time. The court concluded Kevin has a controlling nature and Teresa projects a warm image. The court also set forth the following quote from one of the home study reports: "Teresa seems to be the most nurturing of the parents and the one who is better able to describe her feelings and

¹ Petitioner's Exhibit 16, page 98.

² Petitioner's Exhibit 15, page 1.

concerns.” The trial court’s conclusions concerning the award of physical care are supported by the evidence presented during the trial.

I. Standard of Review.

Because this is an action in equity, our review is de novo. Iowa R. App. P. 4. In our review, we examine the entire record and adjudicate anew the rights on the issues properly presented. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999). Although we give weight to the district court’s factual findings, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. The merits.

Courts may modify the custodial terms of dissolution decrees only when there has been a substantial change in circumstances. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa App. 1998). The best interests of the child are paramount in this decision, and the court’s objective is to place children “in the environment most likely to bring them to healthy physical, mental, and social maturity.” *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). The parent who can administer most effectively to the long-term best interests of the children and place them in an environment that will foster healthy physical and emotional lives is chosen as primary caretaker. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997). The parent seeking to change the physical care provisions of a dissolution decree has a heavy burden and must show the ability to offer superior care. *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980); *In re Marriage of Mayfield*, 577 N.W.2d 872, 873 (Iowa App. 1998). We give the district court’s determination deference because it had an

opportunity to view firsthand the demeanor of the parties and evaluate them as custodians. *Walton*, 577 N.W.2d at 871.

In considering all of the circumstances alluded to above and reviewing the submitted record de novo, we conclude that the modification of the dissolution decree to establish that Teresa provide the primary physical care for the children with Kevin being provided reasonable rights of visitation serves the long-range best interests of the children. Therefore the decision of the trial court is affirmed.

AFFIRMED.

Hecht, J., concurs; Sackett, C.J., concurs specially without opinion.