FILED
JUL 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-247 / 89-1221

IN RE THE MARRIAGE OF ARNELIO MICHAEL CASTELLS AND STACIE ANN CASTELLS

Upon the Petition of

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ARNELIO MICHAEL CASTELLS,

Petitioner-Appellant,

And Concerning

STACIE ANN CASTELLS,

Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge.

Appellant appeals a trial court's refusal to consider a petition for change of physical care. **AFFIRMED.**

Dennis L. Eaton, Des Moines, for appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

PER CURIAM

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Appellant Arnelio Michael Castells brings this appeal after the trial court refused to entertain his petition to modify the child custody provisions of his dissolution decree.

The issues are (1) whether the court was correct in determining it lacked jurisdiction to hear the case, and (2) whether the trial court was correct in finding it would decline to assume jurisdiction even if it had jurisdiction. We review de novo. In re Marriage of McEvoy, 414 N.W.2d 855, 857 (Iowa App. 1987).

The parties' marriage was dissolved in Illinois. The Illinois decree granted appellee Stacie Ann Castells and appellant joint custody of their child. Appellee was awarded physical care. In 1987 the decree was modified because appellee and the child had moved to Florida, and changes were necessary to provide appellant with visitation. The modification involved only visitation and did not change custody. The child and mother lived in Florida at that time and continue to live in the State of Florida. Appellant is a resident of Iowa. The child has come to Iowa for visitation. The child had some medical treatments in Iowa. The child has now returned to Florida.

We agree with the trial court, under these facts, Iowa has no basis to assume jurisdiction. See In re Marriage of Leyda, 398 N.W.2d 815 (Iowa 1987). We also agree with the

trial court, even if Iowa did have jurisdiction, the trial court did not abuse its discretion in declining jurisdiction. The petition of appellant fails to allege the necessary facts to invoke jurisdiction under Iowa Code section 598A.9(1). Even if the Iowa court did have jurisdiction, the matter would best be litigated in either Illinois or Florida where the child has actually resided and where the evidence exists as to the child's care and education.

The trial court found Florida the child's home state and directed its order be transmitted to Florida. We agree with this decision.

AFFIRMED.