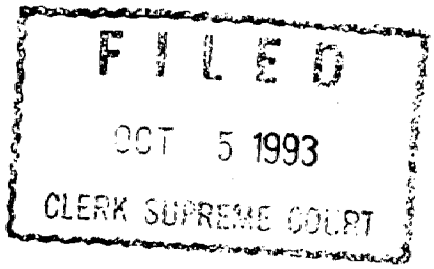
IN THE COURT OF APPEALS OF IOWA

No. 3-448 / 93-270



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IN RE THE MARRIAGE OF MARY A. JONES AND RICHARD A. JONES

Upon the Petition of
MARY A. JONES,

Appellant,

And Concerning
RICHARD A. JONES,

Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

The mother appeals the district court's refusal to modify the dissolution decree and give her primary custody of the parties' six-year-old son. **AFFIRMED.**

Roger J. Hudson and Michael E. Marshall of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Malloney, Shindler, Scalise & Sandre, P.C., Des Moines, for appellant.

Tim Pearson and Teri Beyer of Hyland, Laden & Pearson, P.C., Des Moines, for appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J. 000230

Mary and Richard (Rick) Jones were married in 1982. Their only child, Kyle, was born February 13, 1987. The district court dissolved their marriage on December 17, 1991. The parties had agreed that they would have joint custody and Rick would be awarded primary care. No specific visitation rights were enumerated in the decree.

After the dissolution, Rick became active in a local church. He became the leader of the Wednesday night church group and told Mary she could no longer have visitation on Wednesdays. He refused to allow her visitation on an alternate week night. Mary also says Rick has used visitation as a bargaining chip with her.

Mary claims her relationship with Kyle has deteriorated. She claims Kyle has used profane language and has been violent towards her. She says Kyle has seen Rick and his girlfriend in positions of sexual intimacy. Mary further alleges Rick is not adequately supervising Kyle, and Rick and members of his church who care for him are using corporal punishment on Kyle with a "whacker."

Mary filed for modification of custody. The district court appointed a custody investigator, Mindy Levine. She spent five hours interviewing and testing the parties and forty-five minutes with Kyle. She also had a brief phone conversation with one of Kyle's care providers. Levine recommended that custody be transferred to Mary.

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The district court refused to modify custody. The court gave little weight to Levine's report, finding she had spent little time and had not talked to necessary witnesses before arriving at a conclusion. The court stated it gave great weight to the testimony of Kyle's teacher, his three care providers and his report card.

The district court modified the decree to guarantee minimum visitation, including Wednesday overnight and alternate weekends. The decree was not changed significantly in response to Mary's 179(b) motion.

Mary 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).

Mary contends the district court erred in refusing to modify physical care. She claims Rick has interfered with her relationship with Kyle, constituting a substantial change in circumstances warranting transfer of care.

"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." 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)). The party seeking to take custody from the other must prove an ability to minister more effectively to the children's well-being. Id. This burden stems from the principle that once custody of a child has been fixed, it should be disturbed only for the most cogent reasons. Mikelson, 299 N.W.2d at 671.

Iowa Code section 598.21(8) (1991) specifically delineates circumstances the court shall consider when determining whether a substantial change of circumstances has occurred. While the changes enumerated are generally applicable to requests for modification of child support payments, we find them useful in illustrating the types of changes rising to such a level as to be considered substantial. Included in this section are such changes as changes in residence, changes in marital status, and changes in the physical, emotional or educational needs of the child. In addition, 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. Frederici, 338 N.W.2d at 158. They must also relate to the welfare of the children. Id. Kyle's teacher

and care providers testified Kyle continued to be a happy, growing, well-adjusted child. He was a good student and cooperative at work and play. No evidence presented indicated he was having physical, emotional or educational problems. The district court, which is in the best position to assess the credibility of witnesses, concluded the teacher and care providers were credible witnesses. Accordingly, we affirm the district court's refusal to find a substantial change in circumstances.

We hasten to remind both parties of several important legal provisions regarding child custody. First, the best interests of the child is paramount. Generally, we consider maximum contact with both parents to be in the child's best interests. We consider denial by one parent of the child's opportunity for maximum continuing contact with the other parent a significant factor in determining a proper custody arrangement. Joint legal custody necessarily means that both parents shall have access to information concerning the child, including but not limited to medical and educational information. We encourage these parents to communicate effectively to effectuate Kyle's best interests.

Each party shall pay his or her attorney fees. Costs are taxed to the appellant.

AFFIRMED.