IN THE COURT OF APPEALS OF IOWA

No. 1-530 / 00-1310
Filed December 12, 2001

IN RE THE MARRIAGE OF CINDY A. COHRS AND GREGG S. COHRS

Upon the Petition of
CINDY A. COHRS,
Petitioner-Appellant,

And Concerning
GREGG S. COHRS,
Respondent-Appellee.

FILED
DEC 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cass County, James M. Richardson, Judge.

The petitioner appeals from a district court order modifying the parties' dissolution decree. **AFFIRMED.**

Joseph J. Hrvol of Joseph J Hrvol P.C., Council Bluffs, for appellant.

J.C. Salvo and Richard C Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Heard by Mahan, P.J., and Hecht J. and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (2000).

HABHAB, S.J.

Appellant Cindy Cohrs appeals from the district court ruling that there was a substantial change in circumstances four years after her divorce from appellee Gregg Cohrs such that the primary physical care of their three children, Nichole, Tia, and Cable, should be transferred to Gregg. We affirm.

Gregg and Cindy Cohrs, who married in 1985, are the parents of three children: Nichole, born October 25, 1985; Tia, born July 3, 1991; and Cable, born June 1, 1993. When Gregg and Cindy divorced in 1997, primary physical care of the children was awarded to Cindy. On February 9, 2000, following a trial over Gregg's application to modify the custody provisions in the dissolution decree, the Cass County district court granted Gregg's request and modified the decree to give him primary physical care of the children. Cindy appeals that modification, claiming that Gregg did not meet the high burden of proof necessary, namely a substantial change in circumstances and a showing of superior care, in order to justify his receiving the primary physical care of their children.

The trial court found that Gregg had met his high burden of proof to show a substantial change in circumstances and that he could offer superior care. Contributing to its conclusion were the following: (1) Cindy was frequently and repeatedly moving her children from house to house; (2) Cindy and her children have lived with a series of Cindy's male companions; (3) Cindy allowed the children to live with Gregg for four months; (5) Cindy is isolating her children from their extended family by moving to Omaha; (6) Cindy leaves her children

unsupervised; 7) Gregg has a relatively stable family situation and would include the children's extended family in their lives.

Cindy claims on appeal that the trial court was in error to admit and rely upon three exhibits to support its modification. These exhibits included (1) Exhibit 1, a document prepared by Cindy's mother, Hazel Nicholson, regarding Cindy's lifestyle; (2) Exhibit 11, statements by the children indicating their preference to live with their father; and (3) Exhibit 15, a statement by Cindy's brother and sister-in-law, expressing their conviction that the children would be better off with Gregg. Cindy claims on appeal that these documents were inadmissible hearsay and should not serve to justify the modification. The documents were introduced without objection at trial, so arguments challenging them were not preserved for our review. *See In re Marriage of Maher,* 596 N.W.2d 561, 567 (Iowa 1999). We therefore do not address them.

We do look at the facts in this case, however, to determine whether Gregg met his burden to justify the transfer of primary physical care from Cindy to Gregg. A heavy burden is placed on the party seeking modification of custody based on the principle that once custody is fixed, it should be disturbed only for the most cogent reasons. *In re Marriage of Mikelson,* 299 N.W.2d 670, 671 (Iowa 1980). The party seeking the modification must establish by a preponderance of the evidence conditions have so materially and substantially changed since the decree, the children's best interests make the requested change expedient. *In re Marriage of Frederici,* 338 N.W.2d 156, 158 (Iowa 1983). In a modification of custody, the question is not which home is better, but whether the moving party can offer superior care. *In re Marriage of Rosenfeld,*

524 N.W.2d 212, 213 (Iowa Ct. App. 1994). A more stable lifestyle contributes to the demonstration of the ability to offer superior care to minor children. *See In re Marriage of Rierson*, 537 N.W.2d 806, 808 (Iowa Ct. App. 1995).

We review equity issues such as this one de novo. Iowa R. App. P. 4; *Bergman*, 466 N.W.2d at 275; *In re Marriage of Whalen*, 569 N.W.2d 626, 628 (Iowa Ct. App. 1997). Although we are not bound by them, we give great weight to the fact findings of the trial court, especially with respect to credibility. Iowa R. App. P. 14(f)(7); *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981); *In re Marriage of Pendergast*, 565 N.W.2d 354, 356 (Iowa Ct. App. 1997).

Given that the determination in this case of who can minister more effectively to the needs of the children is essentially an issue of credibility, we give great weight to the trial court's finding that the children would be better off if Gregg were in charge of their primary physical care. Cindy cites *Whalen*, 569 N.W.2d at 630, for her contention that a change in the custodial parent's geographic location is not justification, in itself, for a change of custody. We agree that a change in geographic location is not justification, *in itself*, for a change of custody. In this case, however, we believe the trial court was less concerned with Cindy's relocation to Omaha than it was with her more pervasive problem of instability and inability to create a stable environment for her children. Since the divorce, Cindy has moved eight times, to seven different residences.[1] In that time her children have been placed in three different school districts, in three states, Iowa, Michigan, and Nebraska. They have lived with a one-time fiancé of Cindy, that one-time fiancé's parents, her current twenty-three year-old

[1] Twice Cindy has moved back in with her mother, Hazel Nicholson, and Hazel's companion, Roy Wheatley, in Atlantic, Iowa.

boyfriend, his seventeen-year-old nephew, and various other non-relatives. Further, there is concern now regarding the safety of the Omaha neighborhood to which Cindy has recently moved.

The trial court found Cindy was delinquent and irresponsible in her parenting duties. While primary physical caretaker, Cindy left her children unattended, or under the care of the various non-relative occupants of the residence where she was living at the time. Nichole was often in charge of feeding and caring for her younger brother and sister. Cindy failed to keep orthodontic appointments for Nichole for over a year, and testimony indicates she also failed to keep Nichole's medical appointments. Testimony also indicated that under Cindy's care Nichole was withdrawn, Cable was "hyper," and the children were inadequately nourished.

When Gregg, by agreement, took physical care of the children from August 1999 to early January of 2000, they seemed to do much better. While under his physical custody, Nichole visited the orthodontist, and all three children received medical check-ups. During this time Nichole visited the Shriners hospital for apparently overdue medical treatment. She sought less solace in her music and made some friends, Cable calmed down, Cable and Tia were more independent, and all three children were apparently better fed.

Gregg's may not necessarily be a model home, but his lifestyle and family associations do appear to create a more stable environment. The testimony of Gregg's live-in girlfriend, Teresa Miller, shows she takes an active interest in the children's lives, their schoolwork, and their medical care. Perhaps most important, in living with their father the children will not be cut off from ongoing

contact with their extended family, as they were when they moved with their mother to Michigan and will be if they are relocated to Omaha. The trial court found continuing contact with their extended family essential to the children's development, as do we.

Furthermore, Cindy's own mother testified, and her brother and sister-in-law claimed against Cindy's interest, that the children would be better cared for if their father had primary physical custody. We pay special attention to these claims. Gregg's situation includes living in Lewis for at least the past eight years, being employed by Henningsen Construction for seventeen years, and maintaining contact with the children's extended family. This indicates to us the children may have a relatively stable future with him. We have seen nothing in Cindy's situation indicating stability of any kind. These children need stability, and we agree with the trial court that they stand a better chance of it with Gregg. *See Petition of Anderson,* 530 N.W.2d 741, 743 (Iowa Ct. App. 1995).

AFFIRMED.