

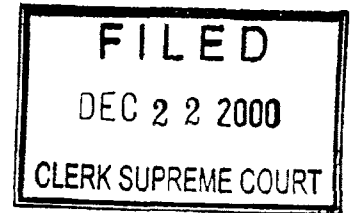
IN THE COURT OF APPEALS OF IOWA

No. 0-668 / 00-451
Filed December 22, 2000

**IN RE THE MARRIAGE OF CHRISTINA M. ISON
AND NICOLAS G. ISON**

**Upon the Petition of
CHRISTINA M. ISON,**
Petitioner-Appellant,

**And Concerning
NICOLAS G. ISON,**
Respondent-Appellee.



Appeal from the Iowa District Court for Lee (South) County, D.B.
Hendrickson, Judge.

Christina Ison appeals a district court order granting Nicolas Ison's petition
for modification of the child custody provisions of their dissolution decree.
REVERSED.

Clemens A. Erdahl of Tindal, Erdahl, Goddard & Nestor, Iowa City, for
appellant.

Steven J. Swan, Keokuk, for appellee.

Heard by Streit, P.J., and Vogel and Hecht, JJ.

STREIT, P.J.

A father who has found the straight and narrow road since the parties' dissolution asserts he should now be responsible for his daughter's primary physical care. We reverse the district court's order granting his request.

I. Background Facts & Proceedings.

Nicolas and Christina Ison's marriage was dissolved in July 1998. They have joint legal custody of their five-year-old daughter Brittney. Initially, Christina was responsible for Brittney's primary physical care.

In February 2000 the district court modified the dissolution decree by placing Brittney in Nicolas's primary physical care. The court stated Nicolas "demonstrated that he can put Brittney's interests ahead of his own [and] demonstrated a sense of maturity and responsibility that is not present in Christina." Christina appeals.

II. Standard of Review.

We review de novo. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). We give weight to the district court's findings of fact, but we are not bound by them. *Id.*

III. The Merits.

The district court's modification of Nicolas and Christina's dissolution decree was only appropriate if Nicolas showed, by a preponderance of the evidence, a substantial change in circumstances since the court entered the decree. See *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). This change must not have been contemplated by the court when it entered the

decree, must be more or less permanent, and must relate to Brittney's welfare. *See Frederici*, 338 N.W.2d at 158. Nicolas must also have proven an ability to minister more effectively to Brittney's well-being. His heavy burden stems from the principle that once custody is fixed, it should be disturbed only for the most cogent reasons. *See id.*

Nicolas asserts his burden should be lightened because the parties had a *de facto* shared physical custody arrangement. Lightening a parent's modification burden when there is such a *de facto* arrangement would undermine one of the Iowa Code's primary goals in dissolution cases: assuring a child the opportunity for maximum continuing physical and emotional contact with both of his or her parents after they have dissolved their marriage. *See* Iowa Code § 598.41(1)(a) (1999); *see also* § 598.1(1). Specifically, a parent who is responsible for his or her child's primary physical care would be reluctant to allow the other parent to have liberal visitation with their child because of the perceived threat to his or her status as primary caregiver. Accordingly, even if Brittney has spent approximately equal amounts of time with Nicolas and Christina, we will not lighten Nicolas's burden.

Nicolas has not satisfied his heavy burden. He asserts there have been three substantial changes in circumstances that warrant transferring Brittney to his primary physical care. First, Nicolas argues Brittney now spends roughly half of her time with him. Although the record shows Nicolas enjoys liberal visitation with Brittney, his current visitation does not significantly exceed the minimum

visitation required by the dissolution decree.¹ Second, Nicolas argues he has become a more mature, stable, and responsible individual since he was in a serious car accident in January 1999. Nicolas filed his modification petition in August 1999, roughly seven months after the accident and roughly twelve months after the dissolution decree. It is too soon to tell if this change is permanent. Finally, Nicolas argues Christina is not the capable parent he once thought she was. The record suggests it is Nicolas's perception of reality—not reality itself—that has changed. Nicolas has not proven a substantial change in circumstances since the district court entered the dissolution decree.

Nor has Nicolas proven he can minister more effectively to Brittney's well-being than Christina can. As we alluded to above, nothing in the record indicates Christina is a less-qualified parent today than she was at the time of the dissolution decree. She may have, as the district court noted, some character flaws.² However, these flaws are not substantial and have not adversely affected Brittney. As the district court also noted, Brittney is a "healthy, happy, normal child." While Nicolas may have proven he is a better parent than he once was, he has not shown he is a better parent for Brittney than Christina is.

There is a temptation to reward Nicolas for the recent, positive steps he has taken towards improving his relationship with Brittney and becoming a better

¹ Nicolas testified that, since at least June 1999, Brittney has been with him on alternating weekends (Friday night to Monday morning), overnight on Wednesdays, and during the day on some nonscheduled Sundays. The dissolution decree stated that, at a minimum, Brittney was to spend alternating weekends (Friday night to Sunday night) and alternating Tuesday and Thursday evenings (5:00 to 8:00) with Nicolas.

² The district court stated it was concerned about Christina's credibility and immaturity because she "was not forthright in her testimony concerning an alleged pregnancy and her testimony about her lack of participation in drug use at a party."

parent. We cannot overlook, however, the heavy burden Nicolas must satisfy to justify transferring Brittney to his primary physical care. Because he has not satisfied this burden, we reverse the district court.

REVERSED.