

IN THE COURT OF APPEALS OF IOWA

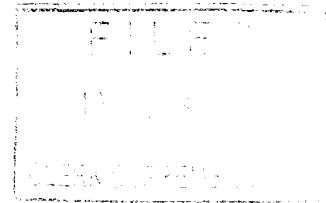
No. 9-290 / 98-1823

Filed May 26, 1999

RANDALL REECE,
Appellee,

vs.

SHERYL LYNN SCHRAMM,
Appellant.



Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Sheryl Schramm appeals from a district court order modifying a Florida child custody judgment and placing primary physical care of the parties' minor child with the father, Randall Reece. **AFFIRMED.**

Linda Hansen Robbins of Irvine & Robbins, L.L.P., Cedar Rapids, for appellant.

Barbara H. Liesveld of Thinnies & Liesveld, Cedar Rapids, for appellee.

Heard by Huitink, P.J., and Streit and Mahan, JJ. Sackett, C.J., takes no part.

STREIT, J.

Sheryl Schramm appeals the trial court's order modifying the custodial arrangement of her son, Christopher. The court modified the arrangement from joint custody to designating Randall Reece, Christopher's father, as primary physical care giver. Because we find a substantial change of circumstances warrants the modification and Reece has a superior ability to parent Christopher, we affirm the modification.

I. Background Facts & Procedure.

Reece and Schramm have one child together, Christopher, born in 1991. The couple never married, but lived together intermittently from 1991 to 1994 in Broward County, Florida. In 1994, Schramm moved to St. Louis, Missouri, with Christopher and Christopher's older half-sibling, David. Reece is not David's father. Before leaving Florida, the parties signed a "shared parenting agreement" prepared by Reece. The agreement was incorporated into a paternity order by a Florida court filed in March 1994. The parties agreed Schramm would have primary physical care of Christopher, and Reece would have weekend, holiday, and summer visitation. Christopher spent the summers of 1994, 1995, and 1996 with Reece.

In December 1996, at Schramm's request, both Christopher and David came to live with Reece in Cedar Rapids, Iowa. The stay was intended to be for a nine-month period. In August 1997, Schramm claims she did not pick up the children because she did not have reliable transportation. In December 1997, Schramm came

to pick up the children. Reece allowed her to take David, but would not allow her to take Christopher back to Missouri. She did not have face-to-face contact with Christopher after that until June 1998.

In December 1997, Reece filed a modification of custody action in Iowa, requesting he be designated Christopher's primary physical caregiver. The court modified the Florida order, awarding primary physical care of Christopher to Reece and ordering Schramm to pay child support of \$268.76 per month. Schramm appeals.

II. Standard of Review.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Smiley*, 518 N.W.2d 376, 378 (Iowa 1994). 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). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

III. Modification of Custody Award.

Schramm contends the trial court erred in modifying the custody award because there is no evidence of a substantial change in circumstances justifying modification; nor evidence Reece has superior ability to parent Christopher.

Courts can modify a custody award only when there has been a substantial change in circumstances since the time of the decree not contemplated by the court when the decree was entered. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa App. 1996). The change must be more or less permanent and relate to the welfare of the children. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa App. 1998). The party seeking modification of custody 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 Smiley*, 518 N.W.2d 376, 378-79 (Iowa 1994)(citing *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983)). The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity. *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa App. 1987)(citing *In re Marriage of Vetterneck*, 334 N.W.2d 761, 762 (Iowa 1983)).

In addition, Reece must demonstrate he can offer Christopher superior care. See *In re Marriage of Whalen*, 569 N.W.2d 626, 628 (Iowa App. 1997). Reece must show an ability to minister to the Christopher's needs superior to Schramm. *In re Marriage of Ivins*, 308 N.W.2d 75, 78 (Iowa 1981); *Whalen*, 569 N.W.2d at 628. If both parents are found to be equally competent to minister to the children, a modification of custody should not be granted. *Id.*; *In re Marriage of Smith*, 491 N.W.2d 538, 541 (Iowa App. 1992).

Our de novo review of the record confirms the validity of the district court's modification of Christopher's custodial arrangement. There have been multiple substantial changes not contemplated by the trial court when the shared custodial arrangement was ordered by the Florida court.

Most importantly is Schramm's failure to maintain a relationship with Christopher. Schramm left Christopher in Reece's care for a year. She had no physical contact with him for a year and did not contact Christopher by phone or letter on a regular basis. At times, Schramm would not talk to Christopher by phone for over a month. Schramm's contention she could not visit or pick up Christopher due to her lack of reliable transportation is an incredible excuse for conduct which continued for a year. Throughout much of the year, Schramm was working six days a week at a job which paid her \$14.50 per hour. With these adequate resources, Schramm could have made retrieval of Christopher, or visitation at a minimum, a priority.

Another substantial change in circumstance is Christopher has become accustomed to having his father as his primary caregiver and living in Cedar Rapids. At the time of the modification hearing Christopher had been living with Reece for nearly two years. He has become adjusted and successful in his elementary school. He participates in extracurricular activities such as little league and junior league football. He appears to be a normal and happy child.

We also reject Sherry's claim Reece is unable to provide superior care to Christopher. Although Reece is not perfect, he has been the stable parent in Christopher's life. He has stable employment and housing, and can provide for Christopher financially. He has always maintained contact with Christopher and has taken primary responsibility for Christopher's physical and emotional needs. The two have a very close bond. Reece has actively participated in Christopher's education and extracurricular activities. He has encouraged and been supportive of Christopher's relationship with Schramm.

In contrast, Schramm has not provided Christopher with stability. She has changed residences at least five times since moving to Missouri in 1994. Schramm's employment has always been at night. In effect, while her children were at school she was not at work and while they were home she was at work. When she could not handle the demands of parenthood, she took her children to live with Reece. While they were there, she showed little interest in them. Schramm cannot have nearly no contact with Christopher for a year and then expect to resume her role as his primary caregiver at her convenience. The resulting disruption and instability to Christopher shows Schramm's lack of good parental judgment. It's clear Reece is the parent who considered Christopher's best interests in stopping his move to St. Louis.

For these reasons, the trial court did not err in modifying Christopher's custodial arrangement by designating Reece as his primary physical caregiver and

ordering Schramm to pay child support. The judgment of the district court is affirmed.

AFFIRMED.

No. 98-1823. [9-290] REECE v. SCHRAMM

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AFFIRMED. Head by Huitink, P.J., and Streit and Mahan, JJ. Opinion by Streit, J.
Sackett, C.J., takes no part. (7 pages \$2.80)

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