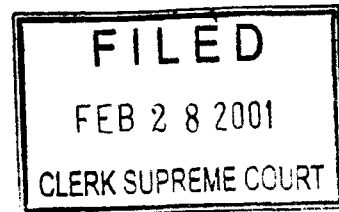


IN THE COURT OF APPEALS OF IOWA

No. 1-05 / 99-1538
Filed February 28, 2001



MARY LUETTA KELLEY,
Petitioner-Appellee,

vs.

RONALD JAMES WOLFE,
Respondent-Appellant.

Appeal from the Iowa District Court for Jasper County, Darrell J. Goodhue,
Judge.

Ronald Wolfe appeals from a district court decision modifying custody of
the parties' minor child. **AFFIRMED.**

Van B. Plumb, West Des Moines, for appellant.

Michael R. Horn of Harrison, Brennecke, Moore, Smaha & McKibben,
Marshalltown, for appellee.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Ronald and Mary are the parents of Christian Wolfe, born May 12, 1993. The parties separated in July 1995. At that time Mary assumed physical care of Christian. In May 1996 the district court entered an order granting Mary's petition requesting physical care and child support for Christian. On January 15, 1997, the court granted the parties' joint request to transfer Christian's physical care to Ronald. The parties reconciled in July 1997 and resided together until their separation in April 1998.

Mary initiated these proceedings on June 9, 1998, by filing an application to modify the January 15, 1997, order granting Ronald physical care of Christian. Mary cited Ronald's cohabitation with a seventeen-year-old woman, interference with her visitation rights, and Ronald's failure to otherwise encourage her relationship with Christian as grounds for modification.

Ronald disputed Mary's claims that he denied visitation or interfered with her relationship with Christian. He affirmatively claimed greater primary care competence and experience citing the hours and demands of Mary's work as an exotic dancer.

After considering the evidence, the district court granted Mary's application to modify the January 1997 order. Mary was granted primary care subject to Ronald's specified visitation rights. On appeal Ronald contends that Mary failed in her burden to show a substantial change in circumstances justifying modification of Christian's physical care.

II. Standard of Review.

In this equity action, our review 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 are not bound by the district court's findings, but we do give them deference considering its opportunity to view, firsthand, the demeanor of the witnesses when testifying. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value; 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. The Merits.

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. *Smiley*, 518 N.W.2d at 378-79 (citing *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983)). 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 Ct. App. 1998). 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 Ct. App. 1987).

The question is not which home is better, but whether Mary has demonstrated she can offer Christian superior care. See *In re Marriage of Whalen*, 569 N.W.2d 626, 628 (Iowa Ct. App. 1997). Mary accordingly must show an ability to minister to the child's needs that is superior to Ronald's. *In re Marriage of Ivins*, 308 N.W.2d 75, 78 (Iowa 1981). If both parents are found to be equally competent to minister to the child, custody should not be changed. *Whalen*, 569 N.W.2d at 628.

The court's modification decree states:

The Court finds and concludes that there has been a material change of circumstances since the last Order of Modification was entered on the 15th day of January, 1997. The Court finds that from approximately July of 1997 through April of 1998, the parties resumed living together. During the time they resided together, Mary Kelley, Petitioner, again became the primary caretaker of the parties' son, Christian. Ronald then moved out of the family residence and moved in with Lisa Berkenbosch at the end of April of 1998. Lisa was seventeen at the time.

Ronald continues to reside with Lisa, who is now eighteen years old and is pregnant. Lisa and the Petitioner are at odds.

The Petitioner [Mary] is presently living with her mother. There are facilities in her home for Christian to live.

Our de novo review of the record discloses abundant support for these findings, and we adopt them as our own.

In reaching this conclusion, we have not ignored our reluctance to disturb established custody arrangements. See *In re Marriage of Dethrow*, 357 N.W.2d 44, 45 (Iowa Ct. App. 1984). However, we share the district court's concern for the wholesomeness of the environment Ronald offers Christian. Additionally, the record belies Ronald's claims of greater primary care competence and experience. Mary provided substantial and at times exclusive primary care for

Christian since his birth. There is no evidence that she failed to adequately care for Christian in any significant way.

Lastly, we reject Ronald's claim that Mary's voluntary transfer of Christian's physical care in 1997 should be weighed against her. Mary's actions, based on her desperate financial situation at that time, were decidedly in Christian's best interests. We believe parents should be encouraged, rather than discouraged, from turning to the other for such assistance when the needs of their children require them to do so. *See generally In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977) ("[P]arents should be encouraged in time of need to look for help in caring for their children without risking loss of custody.").

We therefore affirm the district court's modification decree.

AFFIRMED.