IN THE COURT OF APPEALS OF IOWA

No. 0-388 / 99-0858
Filed August 30, 2000

IN RE THE MARRIAGE OF GINGER I. WAGNER AND KENNETH G. WAGNER

Upon the petition of
GINGER I. WAGNER,
Petitioner-Appellee,

And Concerning
KENNETH G. WAGNER,
Respondent-Appellant.

FILED
AUG 30 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, David E. Schoenthaler, Judge.

The respondent appeals from a modification order awarding primary care of the parties' daughter to the petitioner. **AFFIRMED.**

Lucy H. Valainis, Davenport, for appellant.

David M. Pillers of Pillers Law Offices, Clinton, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

HECHT, J.

Kenneth G. Wagner appeals from a modification order awarding physical care of the parties' daughter to Ginger I. Wagner. We affirm.

I. Factual Background and Proceedings. Kenneth and Ginger Wagner were married in 1992. They have one child together, Elizabeth ("Betty"), who was born on December 16, 1992. Their marriage was dissolved on March 27, 1996; however, they continued to live together for two years following the dissolution decree. The decree provided for joint custody, with Ginger having physical care of Betty three days a week and Kenneth four days a week. The decree did not require either parent to pay child support to the other although Kenneth was responsible for maintaining health insurance for Betty.

Ginger is thirty-five years of age and presently lives with Richard Toppert to whom she was engaged at the time of the modification trial. Richard is forty-two years old, has been employed for twenty years at the same company, and has a twenty-three-year-old son from his previous marriage. Ginger has three children from three previous marriages: Bruce, Alisha, and Troy, who were eighteen, sixteen, and fifteen years old respectively at the time of trial. Although they resided with Ginger during their young childhoods, Bruce and Troy currently live with their father. Alisha lives in foster care because of criminal problems and abuse of alcohol and drugs. Ginger placed Alisha in a residential drug treatment facility due to her ongoing problems with addiction. Ginger attends family therapy with Alisha, and Alisha visits in Ginger's home periodically. They are working on family reunification. At the time of trial, Ginger was employed as a

waitress part-time. She currently attends community college majoring in social work.

Kenneth has a high school education and is employed full-time, making a gross income of approximately $350 per week.

Ginger moved out of the parties' home in July of 1998. Betty remained with Kenneth, although he frequently took her to stay in his parents' home. Several arguments and violent situations arose, some of which occurred when Betty was nearby. Ultimately, Ginger filed a domestic abuse complaint and in September of 1998 a "Protective Order by Consent Agreement" was entered. On October 13, 1998, Ginger sought modification of the physical care provisions of the decree. Kenneth filed a counterclaim requesting sole custody and physical care of Betty. The district court entered its order on February 22, 1999, placing Betty's physical care with Ginger, subject to visitation with Kenneth. The district court also ordered Kenneth to pay child support. Kenneth appeals the physical care provisions of the order.

II. Standard of Review. Because this is an action in equity, our review is de novo. Iowa R. App. P. 4. In our review, we examine the entire record and adjudicate anew the rights on the issues properly presented. *In re Marriage of Maher,* 596 N.W.2d 561, 564 (Iowa 1999). Although we give weight to the district court's factual findings, we are not bound by them. Iowa R. App. P. 14(f)(7).

III. The Merits. Courts may modify the custodial terms of dissolution decrees only when there has been a substantial change in circumstances. *In re Marriage of Walton,* 577 N.W.2d 869, 870 (Iowa App. 1998). The best interests

of the child are paramount in this decision, and the court's objective is to place children "in the environment most likely to bring them to healthy physical, mental, and social maturity." *In re Marriage of Murphy,* 592 N.W.2d 681, 683 (Iowa 1999). The parent who can administer most effectively to the long-term best interests of the children and place them in an environment that will foster healthy physical and emotional lives is chosen as primary caretaker. *In re Marriage of Daniels,* 568 N.W.2d 51, 53 (Iowa App. 1997). The parent seeking to change the physical care provisions of a dissolution decree has a heavy burden and must show the ability to offer superior care. *In re Marriage of Mikelson,* 299 N.W.2d 670, 671 (Iowa 1980); *In re Marriage of Mayfield,* 577 N.W.2d 872, 873 (Iowa App. 1998). We give the district court's determination deference because it had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians. *Walton,* 577 N.W.2d at 871.

Kenneth contends the district court erred by placing physical care with Ginger. He points to the fact Ginger is engaged to be married for the fourth time, has a history of abusive relationships, has failed to take an active role in Betty's schooling, and has had problems with her older three children. By all accounts, Ginger's relationship with her fiancé, Richard, is a stable one and is not abusive. Together Richard and Ginger have an excellent home and are both good parents. Furthermore, the record is devoid of evidence showing Ginger has not taken an interest in Betty's schooling. We find Kenneth's allegations to be without merit.

We do have some concerns about Ginger's difficulties parenting her older children. However, the record indicates she is making effort to repair her relationship with her daughter. Ginger was proactive in dealing with Alisha's difficulties with substance abuse by admitting her into a drug treatment program. She attends counseling with Alisha and as taken steps to make it possible for Alisha to live in her home again. Although her sons do not reside in her home, Ginger seems to have a good relationship with both of them. While he places blame on Ginger for their problems, Kenneth also bears some of the responsibility for parenting Bruce, Troy, and Alisha because he was in the home as their stepfather during some of the difficulties with them.

Several factors influence us when affirming the decision of the district court. It is apparent from the record the physical care arrangement established by the dissolution decree was not working. Kenneth and Ginger have not been able to cooperate to further Betty's best interests. In this regard, we note that after Ginger moved out of the family home, Kenneth severely interfered with Ginger's access to Betty. When awarding physical care, we seriously consider which parent will encourage the most contact between the noncustodial parent and the children. *See In re Marriage of Liebich,* 547 N.W.2d 844, 848 (Iowa App. 1996). We are confident Ginger will be able to foster a positive relationship between Betty and Kenneth. The record indicates she is concerned about how the court proceedings and interactions in the past between Kenneth and herself have affected Betty. She seems willing to work with Kenneth in order to facilitate what is best for Betty. In addition, we note Ginger's fiancé, Richard, also seems

willing to promote Kenneth's relationship with Betty. We are impressed, as was the district court, by the changes Ginger has made in her life recently with regard to her educational pursuits, her involvement in the church, and her positive action to obtain drug treatment for her older daughter.

Both parents are good parents and seem to care deeply for Betty. The district court noted Kenneth takes good care of Betty when she is with him. In addition, he provides a clean and stable home and maintains an interest in her schooling. However, we conclude Ginger is the parent who will be more able to provide for Betty's long-term interests. We therefore affirm the district court's modification of the dissolution decree placing physical care with Ginger and granting Kenneth visitation.

AFFIRMED.