FILED
SEP 29 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-372 / 92-278

379

IN RE THE MARRIAGE OF TERRY LYNN PLETT AND DARWIN RAY PLETT

Upon the Petition of

TERRY LYNN PLETT,

Appellant,

And Concerning

DARWIN RAY PLETT,

Appellee.

Appeal from the Iowa District Court for Muscatine County, John A. Nahra, Judge.

Terry Plett appeals a district court ruling granting Darwin Plett's application to modify the dissolution decree and awarding Darwin primary physical care of the parties' son. **AFFIRMED.**

Catherine E. Johnson, Muscatine Legal Services, Muscatine, for appellant.

Paul J. Bieber of Werner, Werner & Bieber, Davenport, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

FACTS

In January 1986, the district court entered a decree dissolving the marriage of Terry and Darwin Plett. One child was born during the parties' marriage; Brandon, born April 25, 1982. The decree awarded the parties joint legal custody of Brandon, but placed physical care of the child with Terry and provided Darwin with reasonable visitation. Darwin was awarded the marital home in Muscatine, Iowa, where he has remained.

After the divorce, Terry moved into her parents' home in Muscatine. Shortly thereafter, she moved to West Liberty, Iowa, and lived there for approximately one year. She then moved back to her parents' home. Next, she moved to Shannon City, Iowa, and in one year lived in two different residences. In September 1990, Terry married Bill Egan, and they moved to the state of Nevada. Terry eventually moved back to Muscatine to live with her parents. Overall, Terry has moved seven different times since the parties separated. Including preschool and Headstart, Brandon has been enrolled in nine different schools.

Darwin has lived in Muscatine all of his life and in his current residence since December 1981. He resides with his wife, Vicky, and her children. Darwin and Vicky were married in June 1989. They dated for approximately four years prior to their marriage.

In February 1990, Brandon was diagnosed with attention deficit hyperactivity disorder (ADHD). Since his diagnosis, Brandon has been administered Ritalin, a drug to curb his erratic behavior. ADHD is manifested by the child's adverse behavior. He remains jittery and hyperactive and unable to stay focused on simple tasks. The school officials and teachers find his disorder an impediment to his education. Dr. Ruth Evans, a pediatrics counselor, testified stability is of vital importance to Brandon. She explained the absence of stability leaves Brandon anxious and movement from school to school and home to home is inconsistent with his best interests. Brandon's third grade teacher, Charlotte Jennings, supported Dr. Evans' conclusions.

In November 1990, Darwin filed an application for modification of the dissolution decree. Darwin sought a change in custody based in part on Brandon's ADHD diagnosis and Terry's frequent moves. Trial was held on Darwin's modification application.

On January 28, 1992, the district court entered its ruling modifying the decree and placing the primary physical care of Brandon with Darwin. The court found Brandon's ADHD diagnosis and Darwin's more stable lifestyle provided a substantial change of circumstances such that a change in custody was in Brandon's best interests. Terry has filed this appeal. We affirm.

SCOPE OF REVIEW

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. 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).

ANALYSIS

> 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. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citing In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980)); see also In re Marriage of Gravatt, 371 N.W.2d 836 (Iowa App. 1985).

The district court held there had been a substantial change of circumstances largely due to the diagnosis

Brandon suffers from ADHD. It found the evidence supports the conclusion the constant movement from home to home and enrollment from school to school is not in Brandon's best interest. After hearing all the evidence and assessing the credibility of the witnesses, the district court determined it was in the child's best interest to be placed in the parties' joint custody and in the father's physical care. It specifically found Darwin could best minister to Brandon's needs because of his stable and constant living situation.

We agree with the findings of the district court and hold conditions since the entry of the decree have so materially and substantially changed that the child's best interest make it expedient to make a change so that the parties are to have joint custody and Darwin is to have primary physical care of Brandon. Further, we believe the record supports a finding that Darwin has proven the ability to minister more effectively than Terry to the child's well-being. After considering all issues presented, we affirm the district court.

Costs of this appeals are taxed to the appellant.

AFFIRMED.