



IN RE THE MARRIAGE OF ERIC TODD SANDERS AND JAYNE ANN SANDERS Upon the Petition of E

2015 | Cited 0 times | Court of Appeals of Iowa | December 9, 2015

IN THE COURT OF APPEALS OF IOWA

No. 15-1072 Filed December 9, 2015

IN RE THE MARRIAGE OF ERIC TODD SANDERS AND JAYNE ANN SANDERS

Upon the Petition of ERIC TODD SANDERS, Petitioner-Appellee,

And Concerning JAYNE ANN SANDERS, n/k/a JAYNE ANN LEWIS, Respondent-Appellant.

Appeal from the Iowa District Court for Mahaska County, Joel D. Yates,

Judge.

provisions of the dissolution decree. AFFIRMED AS MODIFIED.

Alexandra D. Frazier of R.J. Hudson Law Firm, P.C., West Des Moines,

for appellant.

Kathryn E. Walker of Walker, Billingsley & Bair, Newton, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ. VOGEL, Presiding Judge.

Jayne Sanders s to place physical care

with Eric. Upon the stipulation of the parties that a substantial change of

circumstances had occurred, we agree with the district court that the best

interests of the children dictate that Eric be granted physical care. We therefore

affirm the district court , though we modify the language in



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the decree to clarify the summer visitation.

I. Facts and Background Proceedings.

In Sep -year marriage was dissolved. The

three children, born 2004, 2007, custody and joint physical care. From the time of the decree until August 2014,

the parties alternated care of the children on a weekly basis. This worked well

for the family, as Eric and Jayne both resided in the North Mahaska school

district. However, when Jayne announced she was moving to Colfax, an hour

drive away, the weekly alternating of shared physical care was impacted. On

November 10, Eric filed an application to modify the joint physical care

arrangement. The matter came on for hearing on May 20, 2015, and the court

granted Eric physical care of the children. Jayne appeals.

II. Standard of Review.

We review modification actions de novo. In re Marriage of Brown, 778

N.W.2d 47, 50 (Iowa 2009). We give findings,

especially regarding the credibility of witnesses, but are not bound by them. Id.

Modifying the physical care provision of a decree occurs: 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, which is more or less permanent and relates to the welfare of the child. The parent seeking to change the physical care from the primary custodial parent to the petitioning parent has a heavy burden and must show the ability to offer superior care.

Id. at 51. Where the prior decree granted joint physical care, both parties were

Melchiori v. Kooi, 644 N.W.2d 365,



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369 (Iowa Ct. App. 2002). to Colfax amounted to a substantial change in circumstances relating to the welfare of the children, so the only issue to be determined was which party could demonstrate an ability to offer superior care. Id. at 368.

III. Physical Custody Determination

Jayne first asserts the district court erred in placing physical care of the children with Eric. She raises several points involving concerns whether the children are adequately supervised and their individual needs are properly

After hearing the testimony, the district

unsupported. We agree and find no purpose

in rehashing that which the district court has already sorted through, declining to

The district court concluded:

Less than a year after being awarded joint physical custody, Jayne decided to move from New Sharon to Colfax. That decision carries consequences. For the she left the children with Eric and had extremely limited contact with

them. It was only after the modification action commenced that Jayne wanted to return to alternating weeks. Having had the opportunity to view the testimony and demeanor of both parties, the Court concludes that Eric is better positioned to provide both short-term and long-term stability of the girls. In awarding physical custody to Eric, the Court will maintain important continuity for the girls: they will remain in the only home they have known; they will remain in the only school district they have attended; they will continue to keep their close-knit group of friends; and [they] have the reassurance of being in the familiar surroundings of New Sharon and their extended family on both sides.

Upon our de novo review, we echo these findings and affirm physical care of the children with Eric.

IV. Physical Care v. Visitation



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Jayne next asserts the district court erred by awarding both parents

primary physical care of the children provided:

1. Primary Physical Care. Petitioner [Eric] shall have primary physical care of the minor children pursuant to Iowa Code § 598.1. responsibility to maintain and to

provide for routine care. 2. Visitation. Respondent [Jayne] shall have reasonable rights of visitation that are reasonable and convenient to all parties involved, including, but not limited to: A. During the school year: Every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. B. Mid-week Contact: Respondent will have mid-week contact with the children on a regular basis at regular times as the parties may subsequently agree. Absent agreement of the parties, mid-week contact will be on Wednesday from 5:00 p.m. until 7:30 p.m. on the week after a weekend visitation and on Monday from 6:00 p.m. until 8:00 p.m. on the week of a weekend visitation. C. During summer break from school, from the time school ends in May or June until it resumes in August or September, the girls will be in the primary custody of Jayne subject to every-other- weekend visits for Eric and a weeknight visit on Wednesday, similar to that enjoyed by Jayne during the school year. However, Eric is given seven consecutive days during the summer in which he may exercise for purposes of a vacation. Eric must provide to Jayne in writing his seven days on or before May 1 of each year.

(Emphasis added.)

It is clear from the decree that the children would primarily reside with

Jayne during the summer months but that does not equate to both parents

having, rimary physical care. The first paragraph of the order pertains to physical care, and it unequivocally grants that to Eric. The next

and contains detailed subparagraphs. It is

under this rubric that Jayne is granted increased summer visitation, somewhat

inartfully Other sections of the decree support that

Eric is the physical care provider of the children. For example, Support, s Jayne who is to pay to Eric \$259.00 h month, Insurance and Medical Expenses, of uncovered medical expenses, the mandated responsibility of the custodial

parent in Iowa Court Rule 9.12(5). Therefore, upon our review of the



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modification order as a whole, we conclude physical care of the children was granted to Eric, with increased visitation with Jayne in the summer. However, we modify the language used ambiguity:

C. During summer break from school, from the time school ends in May or June until it resumes in August or September, the girls will be in the primary custody of reside with Jayne subject to every-other-weekend visits for Eric and a weeknight visit on Wednesday, similar to that enjoyed by Jayne during the school year. However, Eric is given seven consecutive days during the summer in which he may exercise for purposes of a vacation. Eric must provide to Jayne in writing his seven days on or before May 1 of each year.

interests of the children, we affirm and

modify the decree only to the extent to clarify the language regarding the summer visitation. Costs on appeal are assessed to Jayne.

AFFIRMED AS MODIFIED.

