IN RE THE MARRIAGE OF JOHN JAY WALSH JR. AND ANGEL NICOLE WALSH Upon the Petition of

2016 | Cited 0 times | Court of Appeals of Iowa | May 11, 2016

IN THE COURT OF APPEALS OF IOWA

No. 15-1531 Filed May 11, 2016

IN RE THE MARRIAGE OF JOHN JAY WALSH JR. AND ANGEL NICOLE WALSH

Upon the Petition of JOHN JAY WALSH JR., Petitioner-Appellant,

And Concerning ANGEL NICOLE WALSH, Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt,

Judge.

AFFIRMED.

Richard R. Schmidt of Spaulding, Berg & Schmidt, P.L.C., Des Moines, for

appellant.

Jami J. Hagemeier of Williams & Hagemeier, P.L.C., Des Moines, for

appellee.

Heard by Vogel, P.J., Doyle, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2015). GOODHUE, Senior Judge.

John Jay Walsh Jr. has appealed from the decision of the trial court that

refused to modify the original decree granting physical care of his minor

from the decision of the trial court awarding Angel one-half of her attorney fees.

We affirm the district court.

I. Statement of Facts

John and Angel were married in February 1995. The parties had two

a decree

entered January 30, 2008. The parties were granted joint legal custody of their

two children, but Angel was granted physical care. John was granted liberal

visitation rights. J. is now over eighteen years of age and is presently living with

John. S. became fifteen in July 2015. On June 30, 2014, John filed a petition to

modify the dissolution decree requesting that he be granted physical care of S.

John contends there has been a substantial and material change of

circumstances and he has the ability to provide superior care for S.

S. developed an anxiety disorder, talked to her mother about it, and was

taken to see a doctor in February 2015. Initially, the problem appeared to be

associated with her schoolwork. Sometime later, the anxiety led to thoughts of

self-harm. Angel arranged for S. to see a child psychiatrist in April 2015 when

-harm. S. was tearful in her

discussion with the psychiatrist and indicated that her anxiety was primarily

related to family issues and specifically her relationship with her mother. S.

refused to have joint counseling with her mother. It developed that S. was quite aware of the pending modification action, even though her mother had avoided

discussing it with her. It was clear that John had discussed the matter in some

depth with S. prior to the meeting with the psychiatrist.

A request was made that a guardian ad litem (GAL) be appointed for S.,

and Diane Dornburg was appointed. She found S. consistently expressed a

strong desire to live with John. The GAL carefully considered the appropriate

factors in The GAL stated S. felt she

had a strong, loving, close, and open relationship with her father but a tense and

conflicted relationship with her mother that was stressful to her. The GAL

specifically noted there could possibly be a long-standing attempt by John to

influence S. in favor of him, but she was not able to conclude parental alienation

had occurred. The GAL stated she could not say whether John could provide

superior care apart from S. having a better relationship with him at the time of the

interviews. The record indicates that Angel has been obligated to provide the

structure, stability, and discipline for S.

The trial court found and concluded

Angel provides a good, safe, structured, and stable home for medical appointments are made and kept, homework is done, and

confirmation classes are attended. She presents S. with healthy events.

The trial court could have also added there is little in the record to suggest

that John has provided any of the above needs or particularly supported Angel in

her efforts to do so. Angel and John have different expectations of their children and different

methods of parenting. At this point in her life, S. prefers the less-structured

parenting method of John. John contends physical care should be modified

s, which John implies is based on home after J. departed.

Angel and the children have lived with McVey in the past, but Angel and

McVey are not presently living together. McVey has a history of driving while

fought in front of the children and police were often called to the residence when

they were living together. McVey and Angel continue to have an ongoing

relationship. Neither the treating psychiatrist nor the GAL who interviewed S.

four times mentioned McVey or that S. had a problem with the relationship

between McVey and her mother in their reports, nor was there any suggestion

y or concern on

the part of S.

II. Standard of Review

Dissolution matters are reviewed de novo. In re Marriage of Sullins, 715

findings of fact, especially as it is relates Id. A trial

Id.

III. Discussion

The legal framework applicable to custody modifications has been long

established and often repeated. To change a custodial provision of a dissolution decree, the applying party

must establish by a preponderance of evidence that conditions since the decree

interests make it expedient to make the requested change. In re Marriage of

Frederici, 338 N.W.2d 156, 158 (Iowa 1983). 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. Id. They must relate to the welfare of the children. Id. A parent seeking to take custody from the other must wellbeing. Id. 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. Id.

The trial court found that John failed to establish there had been material and substantial changes in circumstances, and neither do we find he established such changes. Joh to live with him and the reasons he contends she has arrived at that decision. The trial court, as well as the GAL, carefully considered the factors that have been set

See In re Marriage of Ellerbroek, 377 N.W.2d 257, 258-59 (Iowa Ct. App. 1985). The GAL went ahead to state a trial would be damaging to S., and recommended a discussion between S. and Angel with the end result of a settlement agreement between the parties that the court grant physical care to John. S. continued to refuse any direct discussion with her mother about her desires. Further, the GAL recommended that in the event of a trial, However, a teenage

original custody determination. In re Marriage of Hoffman, 867 N.W.2d 26, 35

(Iowa 2015).

The record did not establish S. was suffering from anxiety until long after

the modification request was filed. Impeding actions requesting modification of a

physical care generally involve the possibility of changing

residence, parental rules, circle of friends, school attended, and a myriad of other

. Consideration of these factors and the

balancing of freedom and restraint, the known and the unknown, and the impact

on the relationship with each parent that would be affected is naturally going to

leave a child confused and anxious. S. had been advised by John of the pending

modification long before the anxiety disorder had been diagnosed.

Even if we are to consider the parental preference of S. to be a substantial

change in circumstances, John must also meet the criteria to show he has the

ability to minister more effectively to the needs of S. See id. at 32. John asserts

that he has a better relationship with S. The GAL report would support that

assertion but one must wonder about the foundation and source of that

charged with addressing the educational, social, and religious needs and training

of S. John has been primarily absent from assuming those responsibilities. It is

caretaker naturally places those duties

substantially on her. T expectations and rules. John has promoted his own parenting approach, creating conflict and confusion. conclusion that John has established he can and would provide different care for

S., but he has not established s best interest for her to be placed in

The trial court awarded Angel one-half of her attorney fees. John has

slightly greater income than Angel. We cannot say the award is an abuse of the

discretion. See Sullins, 715 N.W.2d at 247. Costs of the action are

assessed to the appellant. No appellate attorney fees are awarded.

AFFIRMED.