FILED
AUG 25 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF STEVEN EGANHOUSE AND CLAUDIA EGANHOUSE

Upon the Petition of
STEVEN EGANHOUSE,
Petitioner-Appellee,
And Concerning
CLAUDIA EGANHOUSE,
Respondent-Appellant.

Filed August 25, 1981

1-162
3-65529

Appeal from Jones District Court. Robert Osmundson, Judge.

Respondent-wife appeals the trial court's modification of the child custody provision of a dissolution of marriage decree asserting that the trial court failed to give consideration and weight to expert testimony regarding her lesbianism. AFFIRMED BY OPERATION OF LAW PURSUANT TO SECTION 685.36(1), The Code 1979.

David M. Remley, of Remley, Heiserman & Willems, Anamosa, Ia., for petitioner-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, and Johnson, JJ.

Carter, J., takes no part.

PER CURIAM

This appeal has been considered by four judges of the court. On respondent's appeal of the trial court order granting custody of the couple's only child to the petitioner husband, two judges would affirm the trial court's decision to award custody of the child to the husband and two judges would vote to reverse the trial court's custody decision. The judges of this court being equally divided on the issues, the trial court's decree modifying the decree of dissolution, and awarding custody of the minor child to petitioner husband is affirmed by operation of law pursuant to section 684.36(1), The Code 1979.

AFFIRMED.