FILED
SEP 25 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DAWN M. TROY AND MICHAEL W. TROY

231

Upon the Petition of)
DAWN M. PATTERSON, f/k/a/ DAWN M. TROY,) Filed September 25, 1986
Petitioner-Appellant,)
And Concerning)
MICHAEL W. TROY,) 6-285 / 86-235
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County (85302) - R. J. Curnan, Judge.

Petitioner appeals the trial court's denial of her application for modification of the decree dissolving the parties' marriage. **AFFIRMED.**

David w. Leifker, Dubuque, Iowa, for petitioner-appellant.

John R. Becker, Dubuque, Iowa, for respondent-appellee.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Petitioner appeals the trial court's denial of her application for modification of the decree dissolving the parties' marriage. The decree set up a joint custody arrangement with respondent husband having physical care of the parties' child. She contends the trial court erred in refusing to either transfer physical care from the husband to her or eliminate the joint custody arrangement and give her sole custody. We affirm the trial court.

The marriage of petitioner Dawn M. Troy, now known as Dawn M. Patterson, and respondent Michael W. Troy was dissolved in May 1982. The dissolution decree set up a joint custody arrangement with Michael having physical care of the parties' child, Toni Jo, born in August 1980.

In November 1985, Dawn filed a petition to modify the decree. She asked that she be given sole custody or at least physical care in the joint custody arrangement. She asserted as the changes in circumstances since the decree: she had remarried; Michael was unemployed; he was an alcoholic; he often drove a car while under the influence of alcohol; he had been convicted of several criminal offenses; he left the child with relatives for long periods of time; and when he did have the child, he did not properly care for her. Michael answered Dawn's petition. Trial was held. Afterward the court denied the petition; it refused to modify custody based on its finding that the child was doing well in Michael's care. Dawn has appealed from the court's ruling.

Our review is de novo; we give weight to the findings of the trial court, especially those concerning credibility of witnesses, but are not bound by them. Iowa R. App. P. 4, 14(f)(7). Prior cases have little precedential value; we must base our decision primarily on the particular circumstances of the parties in this case. Our first and foremost consideration in determining custody is the

best interest of the child involved. Iowa R. App. P. 14(f)(15). In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

The sole issue before us is whether the trial court erred in refusing to modify the custodial provision of the dissolution decree. To succeed in modifying the custodial provisions of a dissolution decree the moving party must carry a heavy burden. The supreme court, in In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983), stated:

> 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 Mikelson, 299 N.W.2d 670, 671 (Iowa 1980).

We agree with the trial court that, in this case, Dawn has failed to carry this heavy burden. We agree with the trial court that the preponderance of the evidence shows that Michael is a loving and caring father who has properly cared for Toni Jo and will continue to do so. However Dawn has changed her life, these changes do not demonstrate that a custody change would be in the child's best interest. We do not condone drinking and driving with children in the car. However, the trial court did not think that the evidence of Michael's drinking habits was sufficient to change custody when considered with all other facts and circumstances. After a thorough examination of the record, we find we must agree with this conclusion.

We agree with the trial court that the custody provisions of the dissolution decree should not be disturbed.

AFFIRMED.