FILED
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CLERK SUPREME COURT

645

IN THE COURT OF APPEALS OF IOWA

No. 1-567 / 91-704

STEPHEN LAWRENCE WILSON,

Appellee,

vs.

MARIE IRENE SMITH,

Appellant.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., Judge.

Mother appeals from the trial court's modification order transferring the child's primary physical care to the father. **AFFIRMED.**

Gary D. McKenrick of Gomez, May, McKenrick & Kelly, Davenport, for appellant.

Ted Breckenfelder of Bozeman, Neighbour, Patton & Noe, Moline, Illinois, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Stephen Wilson and Marie Smith are the unmarried parents of a son born in February 1987. Stephen has always acknowledged paternity of the child.

A 1988 decree placed the child in the parents' joint legal custody and in Marie's primary physical care. Subsequently, Marie's mental health deteriorated, and she developed a substance abuse problem. Marie required hospitalization on two occasions. She was first hospitalized in April, 1989 for six weeks because of her substance abuse problem. Marie was hospitalized a second time in September 1990 for what she described as "a partial nervous breakdown." It was at that time Stephen filed an application to modify the custody order. A temporary order transferring custody to Stephen was filed in October 1990. A hearing was subsequently held. The district court left the child in joint legal custody but transferred the child's primary physical care to Stephen.

Marie appeals from the district court's modification order contending the child should be left in her primary physical care.

Our review of this matter is de novo. Iowa R. App. P. 4. We are not bound by the trial court's factual findings, but give weight to them. Iowa R. App. P. 14(f)(7).

The following legal principles govern a child custody determination irrespective of the parents' marital status. Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988).

> 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)).

Marie contends her mental illness does not constitute a substantial change in circumstances because her history of depression and agoraphobia predate the original custody decree. We disagree.

Our review indicates there has been a substantial change in circumstances since the original custody decree. Marie's mental problems have increased markedly. In addition, Marie developed a substance abuse problem subsequent to the original decree. These problems have made it difficult for Marie to provide the child with proper care. Although Marie asserts her mental illness poses no threat to her child, the record reveals her problems have negatively affected the child's psychological and emotional well-being. A psychologist testified the child suffered from a posttraumatic disorder resulting from

the care he was receiving from Marie. The child's symptoms diminished considerably after temporary custody was transferred to Stephen. Finally, we note Marie has interfered in the child's relationship with his father by denying Stephen visitation.

Marie additionally argues even if a substantial change in circumstances was shown, such change was not permanent because her mental illness is being successfully treated. The trial court found, and we agree, Marie's depression, agoraphobia, suicide threats, and other indications of an ongoing mental illness will continue to require treatment. We determine Marie's condition qualifies as one that is "more or less permanent." Frederici, 338 N.W.2d at 158.

Finally, Marie argues Stephen failed to establish he was better qualified to provide primary care for the child. Marie emphasizes Stephen's job frequently requires him to be away from home during the week.

It is true, Stephen's job requires him to be absent frequently during the week. During the times Stephen is gone, the child's paternal aunt assists in caring for the child. Stephen returns home on the weekends and assumes responsibility for the child's care. We note Stephen's employer has been flexible in structuring Stephen's work schedule to accommodate his parental responsibilities. Stephen's absence from the home is only one factor we must consider in determining custody. Other factors must also be considered. For example, since Stephen assumed

responsibility for the child's physical care, the child's mental health and well-being have improved substantially. In addition, the child's aunt noted improvements in his eating and sleeping habits, bowel regularity, and social abilities. The record reflects Stephen's conscientious efforts to treat the child's emotional problems, and his ability to provide a stable living environment for the child.

Based on the foregoing, we determine it is in the best interests of the child if his primary physical care is placed with Stephen. Accordingly, we affirm the trial court.

Costs of this appeal are taxed to the appellant.

AFFIRMED.