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CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 4-185 / 93-19

**IN RE THE MARRIAGE OF SYNTHEA MAAS AND GERALD WEDEMEYER**

Upon the Petition of
**SYNTHEA MAAS,**

Appellant,

And Concerning
**GERALD WEDEMEYER,**

Appellee.

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Appeal from the Iowa District Court for Story County, Carl D. Baker, Judge.

Synthea Maas appeals the denial of her application to modify the child custody provisions of the parties' previously modified dissolution decree. **AFFIRMED.**

Synthea Maas, Ames, pro se.

Steven Shindler and Michael E. Marshall of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellee.

Heard by Donielson, C.J., and Sackett and Huitink, JJ., but decided by Donielson, C.J., and Hayden, Sackett, Habhab, and Huitink, JJ. Cady, J., takes no part.

**PER CURIAM**

Synthea Maas and Gerald Wedemeyer were married on December 18, 1976. Three children were born of the marriage: Zachary, born August 24, 1976, Jacob, born August 15, 1978, and Micah, born September 28, 1979. The parties were granted a dissolution of their marriage on May 24, 1989. They were awarded joint custody of their children. The court hesitantly awarded Synthea their physical care.

Gerald applied for a modification of the dissolution decree. At the modification hearing, evidence was presented that Synthea had spied on Gerald and his new wife: She had attempted to photograph them as they undressed, attempted to listen to conversation from outside their bedroom window, stolen mail out of their mailbox, and entered their home without their permission. She had also repeatedly made derogatory comments to the boys about their father.

On September 21, 1990, the dissolution decree was modified. The district court found:

> Synthea is obsessed. She is determined to destroy the relationship between Jerry and their children. Her course of conduct is detrimental to the best interests of the children. Her failure to keep her promise with the Court at the conclusion of the first trial and her increased activities in this area are changes in condition.
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> If it becomes apparent to Jerry that Synthea is continuing to engage in the same practices that have twice now been prohibited, he is to advise her by letter that it is his intention to terminate visitation if the practice continues. If the practice does continue, he then has the right to deny visitation.

Gerald was awarded sole legal and physical custody of the three boys. Synthea appealed. This court affirmed the modification in In re Marriage of Wedemeyer, 475 N.W.2d 657 (Iowa App. 1991).

In January 1991 Gerald began withholding letters and packages sent to the boys by Synthea. He also began recording all telephone calls. On February 4, 1991, Gerald wrote to Synthea:

> It has become apparent to me by your letters, phone calls, materials given to and withheld from the children and other activities that you are continuing to engage in practices which have been twice prohibited by Judge Seiser. If any of such practices continues, I will terminate your visitation with the boys.

On April 24, 1991, Gerald notified Synthea by letter that he was terminating her visitation effective immediately. On June 16, 1991, he informed her the children were no longer allowed to accept calls from her. Gerald's request on appeal for a limited remand for direction from the trial court on issues of visitation was denied.

Synthea then filed an application for direction from the court about visitation. Gerald answered and counterclaimed for an award of child support, injunctive relief and tort damages. On April 29, 1992, Synthea filed an application for modification of the dissolution decree alleging Gerald's move to West Virginia and his part in alienating the children from their mother constituted a substantial change of circumstances.

After exhaustive hearings on August 26-27 and October 28-30, 1992, the district court wrote:

> The most cogent impression or finding which can be made from the testimony presented at the trial of this modification action is that nothing has changed since September 21, 1990, when Judge M.D. Seiser transferred custody of the boys to Gerald.
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> . . .
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> Since the transfer of custody to Gerald, Synthea has, by telephone calls, letters and personal contacts with the boys, persisted in an effort to uproot the boys from their father and stepmother. It is clear that Synthea has no intention of in any way supporting the relationship between Gerald and the children. The telephone calls and letters are voluminous in number. The letters Synthea has written to her sons total in the hundreds. Almost without exception, the letters contain derogatory references to Gerald and his wife Jackie.
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> . . .
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> Clearly, Gerald was justified in terminating visitation between Synthea and the boys in April, 1991.

The district court further ordered visitation was not to resume until Synthea obtained psychiatric or psychological therapy and supplied a professional opinion visitation could occur in an atmosphere "free from accusation, recrimination and deception."

Synthea appeals. She contends the district court erred in not granting her sole custody of the children in light of Gerald's attempts to alienate her from the boys. She also alleges gender discrimination and conspiracy in the judicial system.

On March 14, 1994, Synthea filed a motion in this court for: immediate submission of the appeal; denial of appellee's request for oral argument; striking of volume three of the appendix; an order of immediate payment of

costs; and leave to file her amendment to her reply brief. On April 5, 1994, Chief Justice McGiverin denied the motion to strike volume three of the appendix and granted Synthea's motion to file an amended reply brief. The motion for costs was found to be moot. Synthea's motion to deny Gerald oral argument was denied when the case was transferred to the court of appeals.

We review modifications of dissolution decrees de novo. Iowa R. App. P. 4. Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

> 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)).

Our review of the record brings us to the same conclusion as the district court. Appellant has not demonstrated any material and substantial change in circumstances not contemplated by the court in the modification of the decree. In the original modification, giving appellee custody and permitting him to withdraw visitation under specific circumstances, the court contemplated the continuing attempts by appellant to destroy the relationship between the children and their father. Appellant's activities to that end continued and increased. Visitation was terminated. The only change we find is that appellant has become more determined and more active in her efforts. This change does not warrant modification of the decree; it only serves to support the decree. The district court did not abuse its discretion by refusing to modify the decree.

The district court set forth four reasonable steps appellant must take before visitation can be resumed. Appellant has not taken these steps. We affirm the decision of the district court denying appellant's petition for modification of the custody and visitation provisions of the modified dissolution decree.

**AFFIRMED.**

All judges concur except Sackett and Huitink, JJ., who dissent.

**SACKETT, J.** (dissenting)

I dissent. The majority has affirmed a decision that prevents Synthea from having any contact or visitation with her three teenage sons. I cannot agree this mother, having devoted a substantial portion of her life to the careful upbringing of her sons, should now be totally isolated from them. I would modify the decision to provide Synthea have visitation and the opportunity to contact the children, and I would remand to the trial court to appoint an attorney for the children.

When Synthea and Gerald were divorced, physical care of the children was awarded to Synthea. Gerald asked for a modification of physical care and physical care was transferred to him. This court affirmed the modification and concluded its opinion with the statement, "This record reveals Gerald is more willing and able to assist the children to develop a strong relationship with both parents than is Synthea. (Emphasis supplied). In re Marriage of Wedemeyer, 475 N.W.2d 657, 660 (Iowa App. 1991).

Looking at the record before us in this appeal, I do not think we could have been more wrong when we predicted Gerald would help the children develop a strong relationship with both parents. I can only conclude from the record before us that after Gerald received physical care, he and his current wife engaged in a course of conduct designed to totally cut Synthea off from her three

young sons who have continually declared they wish to be in their mother's custody.

The tragedy of this case is two intelligent, well-educated parents have not been able to put personal animosities aside following their dissolution to work collectively for the betterment of their children. Gerald is an M.D. who has passed pathology boards. He is currently employed at an excellent job and has financial resources to hire an attorney.

Synthea has an R.N., a D.V.M., and a PhD in Veterinary Microbiology. She has had difficulty in recent years finding employment. Synthea attributes this in part to publicity Gerald's attorney caused to be disseminated following certain hearings. Synthea has minimal employment and limited resources. She represents herself in this proceeding. Synthea contends there has been gender discrimination in her case and she alleges a conspiracy in the judicial system. While I feel pro se representation has put her at a disadvantage, I do not agree with her contention she has been the subject of gender discrimination or there is a conspiracy against her in the judicial system. While I disagree with the majority decision on the issues she has raised, I am convinced my fellow judges' votes with the majority are not the result of gender discrimination or a judicial conspiracy.

Synthea is devastated by being cut off from her children, and she is frustrated with the legal process.

She has very strong love for her sons and they for her. She spent years as a devoted mother evidenced by her sons success and their affection for her. Her education, background, and interest in good education put her in a position of being able to enrich their lives. Synthea has given her children much and has never harmed them. They are strongly bonded to her.

I recognize Synthea was hospitalized for alleged mental treatment. She has taken lithium and other prescription drugs. Whether it was exhaustion and frustration or another problem, I am not competent to determine. However; whatever her problem, there is nothing in this record that indicates her condition has or would put her children at risk if they were in her care.

Gerald, the father this court found would further a relationship with both parents, summarily cut off Synthea's visitation with the children because he and his current wife determined Synthea was communicating with the children and, in doing so, was derogatory to him and his wife and was undermining his relationship with the children. Gerald complained about a large number of letters Synthea wrote to her children which he and his current wife obviously intercepted despite having been ordered by the trial court not to censor the children's mail. Gerald's wife has summarized these letters with her editorial comments for the records. Synthea's letters had advice for her children on eating their vegetables, the dentist they were seeing,

and the appeal of the former custody action. Synthea sent magazine articles and poems to the boys with comments. Synthea's letters conveyed her concern Gerald and his current wife might not provide for the children as they should and from the letters it is clear Synthea has no affection for either of them. The stepmother's reporting of the letters and her editorial comments made it clear the stepmother considered any attempt by Synthea to do anything for the boys, give the boys advice, see the boys at ball games or school activities was an invasion on Gerald's custodial rights to the children.

Gerald lost his job in Des Moines and was looking for another. When Gerald found a job in West Virginia he did not tell Synthea or provide for her to see the children until the day before he moved. By this time, one child had run away from Gerald's home. When Gerald took the other two children to Synthea's for visitation, he demanded to search Synthea's house for the missing child. The child was not with Synthea but, rather, was hiding in the woods near Gerald's home. Gerald moved to West Virginia the next day without even telling Synthea the child had been found and without allowing her to see him. This conduct by Gerald and his current wife is not the type of conduct that furthers the children's relationship with Synthea.

Since the children moved to West Virginia in 1991, Synthea has had practically no contact with them. She sent them a telephone and she has an 800 number available to

them. The children are forbidden to even call her. Synthea rented a mailbox where she sent them letters but Gerald put a stop to this, too. Synthea has seen the children at their school and when Gerald let one of the boys return to his grandmother's in Iowa. Synthea has used an alias to attempt to obtain information from the children's school on their progress. I find this conduct on Gerald's part outrageous. If he and his wife are so insecure about their position as custodians that they are unable to deal with the children receiving letters and phone calls from a mother over 1000 miles away, then I question their abilities to be custodians.

What bothers me most about this proceeding is the children have not had legal representation; although, it appears from the record, Synthea attempted to obtain legal representation for them. Both sides agree the children's preference is to be with their mother. The children's ages and intelligence and their intimate knowledge of the conditions that exist in both households convince me their preference should be given very serious weight and this is a case where the children should have had and should have an attorney representing their interests.

In denying Synthea's application for modification, the trial court criticized Synthea for signing the boys up for activities in Ames when they were living in Urbandale with their father; publicly berating Gerald; keeping Gerald's home under surveillance; encouraging the boys to sneak out

without telling Gerald; not informing Gerald of important incidents in the children's lives; taking the children to a family counselor in Ames without informing Gerald and undermining his counselor; secretly sending telephones to the boys; installing an 800 number to receive calls at a reduced rate from Gerald's home without his knowledge; and having the secret mailbox in West Virginia and sending mail for the children there and to a friend of the boys.

Synthea candidly admits she has attempted to stay in contact with the boys through mail and an 800 number. She is upset these attempts have been thwarted. I agree with her that these were clearly reasonable attempts to communicate with her children.

The majority has affirmed, virtually isolating Synthea from her children. Totally terminating the visitation between a noncustodial parent where there is substantial bonding between the noncustodial parent and the children is without precedent. Even in In re Marriage of Udelhofen, 444 N.W.2d 473 (Iowa 1989), where the Iowa Supreme Court affirmed our modification transferring custody from a mother to a father after finding the mother told the child the father no longer loved him and the father was possessed by the devil, visitation was not terminated. Id. at 476.

I would remand to the trial court to immediately establish visitation between Synthea and the children. I would order the children be allowed to call her on her 800 number and be allowed to receive mail from her in a mailbox

she pays for so the mail will go directly to the children and not, as it has in the past, be censored by the father or stepmother. I would direct the trial court to appoint an attorney to represent the children and to make an investigation. If the attorney for the children determines after the investigation it is in the children's best interest to make further application to this court regarding custody and visitation, he or she should do so.

Huitink, J., joins this dissent.