FILED
AUG 25 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PATRICE ANN DEBERG AND MARK RAY DEBERG

Upon the Petition of)
PATRICE ANN DEBERG,)
Petitioner-Appellant,)
And Concerning)
MARK RAY DEBERG,)
Respondent-Appellee.)

Filed August 25, 1981

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Appeal from Delaware District Court - C. W. Antes, Judge.

Petitioner appeals that part of the trial court's dissolution order that grants custody of their only child to respondent and alleges trial court erred in denying her motion for a new trial. AFFIRMED BY OPERATION OF LAW PURSUANT TO SECTION 684.36(1), THE CODE.

Jack Schroeder, Des Moines, Iowa, for petitioner-appellant.

Peter J. Gartelos, James L. Wagner & James L. Beeghly of Gartelos, Wagner & Beeghly, Waterloo, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

This appeal has been considered by four judges of the court. On petitioner's appeal of trial court order granting custody of couple's only child to respondent, two judges would affirm the trial court's decision and two judges would vote to reverse. On petitioner's appeal of trial court's denial of her motion for a new trial, two judges would affirm the trial court's denial and two would not consider it since they would vote to reverse the custody placement. The judges of the court thus being equally divided on the issues, the trial court's decree is affirmed by operation of law pursuant to section 684.36(1), The Code.

AFFIRMED.