FILED
SEP 21 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONNA JEAN MARKS AND TED EMANUEL MARKS

Upon the Petition of	)	
DONNA JEAN MARKS,	)	Filed September 21, 1978
Appellant,	)	
And Concerning	)	
TED EMANUEL MARKS,	)	589 3-61000
Appellee.	)	

Appeal from Polk District Court - A. B. Crouch, Judge.

Petitioner wife appeals from modification of custody provisions of dissolution decree. Affirmed.

Gary B. Garrison, of Des Moines, counsel for appelalnt.

Joseph L. Marks & Harlan Hockett, of Marks, Flagg, Hockett & Marks, of Des Moines, counsel for appellee.

Heard by Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

Petitioner-Donna Jean Marks (Montel) appeals from an order modifying a 1972 dissolution decree by awarding sole custody of the parties' son to respondent-Ted Emanuel Marks, subject to specified visitation. Donna contends that Ted failed to meet his burden of showing a substantial change of circumstances justifying a modification, and further urges that there was a change in circumstances that would justify modification in her favor. We affirm.

Donna and Ted were married in 1966 and their only child, Daniel, was born July 13, 1967. A decree of dissolution of marriage was entered on May 9, 1972, which gave the parties joint custody of Danny. Donna had possession, care and control during the school year, Ted during the summer, and the parent not in possession received specified visitation rights. On January 7, 1975, Ted filed an application to modify the decree, alleging that Donna intended to move to Michigan with her new husband, and Danny's best interests would be served by awarding Ted sole custody. Donna replied by asking that sole custody be awarded to her, and a hearing on the modification was held. The trial court found that the best interests of Danny dictated that sole custody be awarded to Ted, with visitation by Donna allowed one weekend a month in Iowa and two weeks during the summer.

Our review in this matter is de novo. Rule 4, Rules of Appellate Procedure. We give weight to the trial court's findings of fact, but are not bound by them. Rule 14(f)(7), R. App. P. The party seeking to modify a decreed custody arrangement has the burden of showing a material and substantial change of circumstances since the time of that original decree which warrants a transfer of the child to his or her custody. Hobson v. Hobson, 248 N.W.2d 137 (Iowa 1976). The best interests of the child involved remain our first and governing consideration. Rule 14(f)(15), R. App. P.

In its modification order, the trial court noted that the joint custody decree had been made for the benefit of Donna and Ted, and not Danny, who had become an innocent victim of the battle that raged between his parents. Both parties have engaged in behavior that at best can be termed immature. Specifically, the trial court found that Donna's unstable lifestyle, use of marijuana, and move to Michigan constituted the change in circumstances warranting placing custody in Ted. A careful

review of the record does not lead us to the conclusion that the trial court was in error; his judgment is amply supported by the facts. We agree that the best interest of Danny is served by placing sole custody with Ted, who demonstrated that he could provide a suitable and stable home for Danny in the community where he has strong ties.

AFFIRMED.