IN THE COURT OF APPEALS OF IOWA

No. 6-555 / 96-0518

IN RE THE MARRIAGE OF TRACY ANN CRAWFORD AND MICHAEL WENDELL CRAWFORD

Upon the Petition of
TRACY ANN CRAWFORD n/k/a TRACY ANN BURTON,

FILED
NOV 27 1996
CLERK SUPREME COURT

Petitioner-Appellant,

And Concerning
MICHAEL WENDELL CRAWFORD,

Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Tracy appeals from the district court's ruling denying her petition to modify the custody provisions of the dissolution decree. **REVERSED AND REMANDED.**

Stephen C. Ebke of Porter, Tauke & Ebke, Council Bluffs, for appellant.

Tim B. Streff of Pfeffer Law Offices, Omaha, Nebraska, for appellee.

Heard by Cady, P.J., and Huitink and Streit, JJ.

STREIT, J.

Mother appeals from the district court's ruling denying her petition to modify the custody provisions of the dissolution decree based on intolerable living conditions in the father's home. Modification concerned the petitioner and respondent's two children, April, born in 1985 and Kayla, born in 1988. We reverse the district court and modify the custody provisions to give the mother primary physical care of the children.

Tracy and Michael Crawford were married in 1984. A dissolution decree was entered in 1990. By stipulation, the court granted Tracy and Michael joint custody with Michael having primary physical care of the children. Tracy was granted visitation every weekend. In 1992, the decree was modified by stipulation granting Tracy physical care of the children during the summer months and awarded Michael visitation every other weekend during that period. Later that year, Tracy further sought to modify the decree to gain sole custody, but the petition was denied. Similarly in 1994, Tracy filed a pro se petition seeking sole custody of the children, but the petition was dismissed without prejudice on motion by Tracy.

In 1995, Tracy arrived at Michael's home to pick up the children for a scheduled weekend visitation. She found the children home alone, and the house was in shambles. Clothes were strewn about the house. The counters in the kitchen were cluttered with food and dirty dishes. Cat feces were scattered over the entire back porch and the odor emanated into the rest of the house. Large containers of marijuana

were found in Michael's bedroom on the dresser and underneath his bed as well as drug paraphernalia. Cobwebs and spiders were everywhere. Pornography materials were scattered throughout the house.

Tracy called the Pottawattamie County Sheriff's Department and reported what she had seen. A search warrant was issued and law enforcement officers from the Pottawattamie County Sheriff's Department and the Council Bluffs Police Department executed the warrant on Michael's home. Officers involved in executing the warrant testified the house was uninhabitable. The pictures taken that evening strongly support this opinion. Michael was arrested and charged with possession of a controlled substance three days later.

Tracy filed a Petition for Modification based on the living conditions in Michael's home, Michael's drug use, and the children's poor performance in school. The trial court denied the petition based on Tracy did not prove a material and substantial change of circumstance necessitating a change in physical custody.

Tracy appeals. She contends Michael's drug use and the deplorable living conditions in his home constitute a change in circumstances and justify modification.

In an appeal from an action to modify custody, our review is de novo. *In re Anderson*, 530 N.W.2d 741, 741 (Iowa App. 1995). We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). Prior

cases have little precedential value and, we must base our decision primarily on the particular circumstances of the parties before us. *Anderson*, 530 N.W.2d at 741.

In reviewing a modification action, the governing legal principles are well established.

> 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 for only the most cogent reasons.

Anderson, 530 N.W.2d at 741-42.

We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). In this case, we find the testimony of the police officers who entered the house that evening and the photographs entered into evidence taken by the police of Michael's home make it expedient to make the requested change of custody.

At the time of the decree granting custody to Michael, the court could not have contemplated the living condition that these children endured. The police officers testified there was garbage, papers, and trash behind the couch along with layers of dirt

and dust. The beds were unmade and no signs of sheets, blankets, or pillows available for any of the beds.

The trial court found both parents were suitable custodians for April and Kayla. We find the evidence persuasive to support there has been a change in circumstances regarding the children's living environment since the decree. Tracy has demonstrated an ability to administer more effectively toward the children's development and provide a home suitable for children. For the welfare of the children and in their best interests, we reverse the trial court and grant joint custody with primary physical care to Tracy.

The court is unable to determine from the record Respondent's earnings and therefore, we remand to the trial court to determine child support. We further remand to the trial court to determine visitation. We do not retain jurisdiction. Costs of this action are assessed to the Respondent.

REVERSED AND REMANDED.