

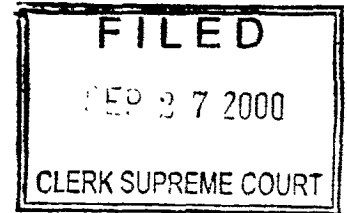
IN THE COURT OF APPEALS OF IOWA

No. 0-549 / 00-404
Filed September 27, 2000

**IN RE MARRIAGE OF KAREN A. KAUFFMAN
AND JAMES A. KAUFFMAN**

**Upon the Petition of
KAREN A. KAUFFMAN,
Petitioner-Appellee,**

**And Concerning
JAMES A. KAUFFMAN,
Respondent-Appellee,**



Appeal from the Iowa District Court for Mitchell County, John Stuart
Scoles, Judge.

The respondent appeals a district court ruling granting the petitioner's
application for modification of child custody. **AFFIRMED.**

Douglas Krull, Northwood, for appellant.

Patrick J. Rourick, St. Ansgar, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

James Kauffman appeals a district court ruling granting Karen Kauffman's application for modification of child custody. He argues the district court erred in ruling his former spouse had shown a substantial change in circumstances justifying a transfer of physical care of their youngest daughter. We affirm.

I. Background Facts and Proceedings. James and Karen Kauffman divorced in Minnesota in 1987. They were awarded joint legal custody of their children, Jennifer, born in 1980, and Rachel, born in 1983. The decree granted Karen primary physical care. Rachel was four years old at the time of the divorce.

In October 1996, when Rachel was thirteen, James filed an action requesting that physical custody of Rachel be transferred to him. Shortly after the petition was filed, a hearing was held on James's request for temporary custody of Rachel, pending final hearing on his request to modify. In its ruling denying his application, the court concluded James

has not demonstrated that a transfer of temporary custody from Karen to James would be in the best interest of Rachel, nor that it would provide superior benefits to those which are currently available for Rachel while remaining in her mother's primary physical custody.

In April 1997, while James's application was pending, Rachel was removed from her mother's home after she informed the police and the department of human services that her mother had slapped her face after an argument. Following a hearing, the juvenile court filed a temporary removal order placing Rachel in her father's care in Minnesota and adjudicating her a child in need of assistance.

In January 1998, the district court entered a modification decree adopting

by reference an agreement signed by the parties which provided that Karen would retain physical care of Jennifer and James would retain Rachel's physical care. Karen and James live approximately thirty miles apart. Karen lives in St. Ansgar, Iowa and James lives in Brownsdale, Minnesota.

In January 1999, Karen filed a petition for modification requesting she be awarded Rachel's primary physical care. Following a hearing, the district court concluded Rachel's primary physical care should be transferred back to Karen.

James appeals. He claims Karen failed to show a substantial change in circumstances justifying a custody transfer. He also argues Rachel's school performance improved while attending school in Minnesota and she has a good relationship with his new family. Additionally, he claims Karen has an alcohol abuse problem and he is better able to minister to Rachel's needs.

II. Standard of Review. We review the record de novo in a proceeding to modify the custodial provisions of a decree. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa App. 1996). We give weight to the findings of the trial court, although they are not binding. *Id.*

III. Modification of Custody. The court can modify custody only when there has been a substantial change in circumstances since the time of the decree that was not contemplated when the decree was entered. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa App. 1998). The change must be more or less permanent and relate to the welfare of the child. *Id.* Additionally, the parent seeking custody must prove an ability to minister more effectively to the child's well-being. *Dale*, 555 N.W.2d at 245. This strict standard is premised on the

principal that once custody of a child has been determined it should be disturbed only for the most cogent reasons. *Id.*

After carefully considering the evidence, the trial court concluded Rachel's desire to return to her mother's home in St. Ansgar should be honored. Upon de novo review of the record, we reach the same conclusion. Rachel was sixteen at the time of trial. A school counselor described Rachel as very mature. The modification court reached the same conclusion after meeting with Rachel in chambers.

In assessing Rachel's strong preference to live with her mother, we consider her age and educational level, the strength of her preference, her relationship with family members, and the reasons she gives for her decision. *In re Marriage of Hellerbrook*, 377 N.W.2d 257, 258-59 (Iowa App. 1985). Rachel articulated a number of reasons for preferring to return to her mother's residence. Rachel does not feel connected to the Hayfield school district. She has developed few friends there and no longer participates in extra-curricular activities. She maintains a number of close friendships in St. Ansgar and desires to graduate from St. Ansgar high school. Rachel does not wish to return to her mother's home because she is upset with her father. Rachel has a good relationship with James. Nevertheless, she is clearly unhappy living with him. Rachel does not have a close relationship with her step-family. She is more comfortable talking to her mother about issues and problems. Rachel also wants to establish a closer relationship with her sister, Jennifer. According to the school counselor, Rachel's desire to move back with her mother has been longstanding and unwavering.

After the divorce, Rachel lived with her mother until she was thirteen. In later years, her relationship with her mother was sometimes rocky. Rachel now has a close relationship with her mother and sister and is confident she and her mother will continue to have a good relationship despite some past problems. We do not ignore the prior allegation of physical abuse by Karen which led to James obtaining custody of Rachel. However, in her meeting with the trial court, Rachel stated that when she was thirteen, she fabricated the slapping incident involving her mother. Rachel is of sufficient age, maturity, and education to give significant weight to her clear preference to live with her mother. The testimony shows Karen is able to provide Rachel with a good home, closer to her stated choice of school, her friends, and her sister. It appears Rachel's overall happiness and her social development will be facilitated by a change in primary care. We affirm the trial court's decision to modify physical placement of Rachel.

AFFIRMED.