FILED
MAY 30 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-238 / 94-1593

IN RE THE MARRIAGE OF BARBARA LU MADSON AND STUART BARNES MADSON

Upon the Petition of
BARBARA LU MADSON,

Appellant,

And Concerning
STUART BARNES MADSON,

Appellee.

Appeal from the Iowa District Court for Worth County, Jon Stuart Scoles, Judge.

Barbara Madson appeals a district court order modifying a dissolution decree to transfer primary physical care of the parties' oldest daughter to Stuart Madson.

AFFIRMED.

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

Douglas A. Krull of Greve & Krull, Northwood, for appellee.

Heard by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

Barbara Madson appeals an order modifying custody of the parties' oldest daughter. Upon our de novo review, we affirm.

The marriage of Barbara and Stuart Madson was dissolved by decree of dissolution on October 13, 1992. The parties had stipulated they would have joint legal custody of their children and Barbara would be granted their physical care. Barbara and Stuart have three daughters, August, born December 16, 1977, Jessica, born September 29, 1979, and Sarah, born January 20, 1983.

In February 1994 Barbara assumed new employment and moved to Vermont. Jessica and Sarah moved with Barbara while August remained in Northwood, Iowa, with her father so she could complete her sophomore year of high school. Due to August's desire to complete her high school education in Northwood, Stuart commenced a modification action in June 1994 to have August placed in his physical care. Barbara resisted the action and a hearing was held on July 25, 1994.

On August 9, 1994, the district court granted the modification. The district court found Barbara's relocation to Vermont and August's desire to remain in Iowa constituted a substantial change in circumstances. The court concluded August's best interests were served by allowing her to remain with her father. On appeal, Barbara claims Stuart failed to sustain his heavy burden to establish a substantial change of circumstances.

The legal principles governing modification actions 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.

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)).

In determining custody, we are to weigh a child's wishes after considering the child's age and maturity. Iowa Code § 598.41(3)(f) (1993). Generally, a geographic relocation alone does not constitute a substantial change in circumstances. *See In re Marriage of Smith*, 491 N.W.2d 538, 540 (Iowa App. 1992). In determining custody, we are also guided by the presumption that siblings should not be separated. *In re Marriage of Will*, 489 N.W.2d 394, 398 (Iowa 1992).

In addition to the testimony of the parties and August, we are afforded the benefit of the testimony of August's school counselor and a psychologist. We find August to be a mature individual whose desire to remain in Northwood was sincere and not based on any hostility or animosity toward her mother. She has academic goals which she can best achieve by remaining in Iowa. Given the circumstances of this case, we conclude the combination of Barbara's relocation and August's desire to

remain in Iowa constitute a substantial change in circumstances. The record indicates August's separation from her siblings has not had a negative effect on their relationship. Remaining in Iowa in her father's care is presently in August's best interests. We have carefully reviewed each of Barbara's arguments and find the modification should be affirmed.

AFFIRMED.