

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 29 1986

IN RE THE MARRIAGE OF JEFFREY LYNN MIZER AND TAMARA RAE MIZER
CLERK SUPREME COURT

206

UPON THE PETITION OF
JEFFREY LYNN MIZER,

)

Filed January 29, 1986

)

Petitioner-Appellee,

)

5-568
85-631

AND CONCERNING
TAMARA RAE MIZER,

)

Respondent-Appellant.

)

Appeal from the Iowa District Court for Scott County - L. D. Carstensen,
Judge

Respondent wife appeals from a modification of the decree dissolving
the parties' marriage. **AFFIRMED.**

Teresa M. Bremer, Davenport, for respondent-appellant.

Morton A. Teitle, Davenport, for petitioner-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

Respondent Tamara Rae Mizer appeals from the trial court's order modifying her dissolution decree and ordering joint custody of the parties' son with physical care to Petitioner Jeffrey Lynn Mizer.

The parties were married in 1978. Their only child Jason was born in 1979. The parties' marriage was dissolved in 1982. Tamara was granted custody of Jason. Jeffrey was given reasonable rights of visitation.

In August of 1984, Jeffrey filed a petition to modify the decree claiming there had been substantial change of circumstances. The trial court modified the decree to provide for joint custody with Jeffrey to have physical care. Tamara has appealed the decision.

The modification to change the custody from sole to joint custody is supported by the record and Iowa Code section 598.41(1)(1983)(as amended by 1984 Iowa Acts 1088); See In re Marriage of Dethrow, 357 N.W.2d 44 (Iowa App. 1984). The more difficult question is whether the trial court was correct in modifying the decree to award physical care to Jeffrey.

Our review is de novo. Iowa R. App. P. 4. When considering the credibility of witnesses, we give weight to the trial court's findings but are not bound by them. Iowa R. App. P. 14(f)(7).

In order to obtain a transfer of physical care, Jeffrey must demonstrate a superior ability to parent the child. See In re Marriage of Dethrow, 357 N.W.2d 44 (Iowa App. 1984); In re Marriage of Junkins, 240 N.W.2d 667 (Iowa 1976).

One of the reasons for the request was Tamara's anticipated move to Texas. Jason had resided with Tamara since the dissolution. Jeffrey had lived in close proximity, and he and his family had substantial contact with Jason and input into his upbringing.

Some fourteen months prior to Tamara's anticipated move, she had secretly remarried. Her husband went to Texas because of employment opportunities. He had been in Texas for over a year prior to Tamara's planned move. During that period, he had made little financial contribution to Tamara and appeared to have little contact with Tamara and Jason. The record tells us little of his capabilities as a stepparent.

Tamara has no employment in Texas. There is no evidence her needs and those of Jason would be adequately met in Texas.

Iowa courts have been reluctant to prevent custodial parents from taking children from Iowa where the record indicates they have valid reasons for leaving and the record supports a finding that they have made adequate provision for the move. See In re Marriage of Jerome, Sup. Ct. No. 85-150, ___ N.W.2d ___, slip op. at 6 (Iowa App. Aug. 29, 1985); In re Marriage of Deck, 342 N.W.2d 892 (Iowa App. 1983); In re Marriage of Frederici, 338 N.W.2d 156 (Iowa 1983).

We agree with the trial court that there is no evidence that Tamara has employment in Texas and there is no evidence that her current husband has assisted Tamara and/or the child in the past.

We consider too as did the trial court that Tamara has had difficulties supervising and disciplining the child. We look too at the stability of Jeffrey's home and the relationship the child enjoys with his extended family in the Davenport area. We have considered too the child's special educational needs which are being met. There is no evidence that these needs will be met in Texas.

The record clearly supports the findings of the trial court.

Costs on appeal are taxed to Tamara.

AFFIRMED.