

IN THE COURT OF APPEALS OF IOWA

No. 6-354 / 95-2114

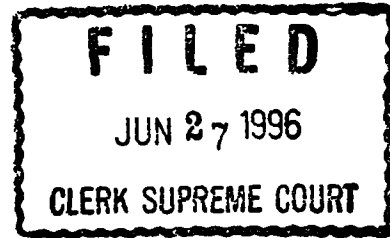
**IN RE THE MARRIAGE OF PAMELA JO HASSTEDT
AND MICHAEL A. HASSTEDT**

**Upon the Petition of
PAMELA JO HASSTEDT,**

Respondent-Appellant,

**And Concerning
MICHAEL A. HASSTEDT,**

Petitioner-Appellee.



Appeal from the Iowa District Court for Boone County, William J. Pattinson,
Judge.

Pamela challenges the order modifying the parties' dissolution decree by
changing primary physical care of one of the parties' children from Pamela to
Michael. **AFFIRMED.**

Dorothy L. Dakin of the Dakin Law Office, Boone, for appellant.

Jim P. Robbins of Jim P. Robbins, P.C., Boone, for appellee.

Heard by Sackett, C.J., and Habhab and Streit, JJ.

STREIT, J.

Pamela Hasstedt challenges the order modifying the parties' dissolution decree by changing primary physical care of her daughter, Tiffany, from Pamela to Michael. We affirm.

On December 21, 1992, the district court dissolved the marriage of Pamela Jo and Michael Hasstedt. It awarded primary physical care of the parties' two minor children, Tiffany, born October 11, 1980, and Krystal, born January 31, 1984, to Pamela. Immediately following the divorce, Tiffany began having emotional difficulties. She suffered from low self-esteem and frequently argued with Pamela and Krystal.

Pamela, Krystal, and Tiffany moved from Boone to Norwalk in 1994. At this time, Pamela and Tiffany's relationship became increasingly strained leading Pamela to place Tiffany in a youth shelter. When Michael, who still lived in Boone, discovered the placement he removed Tiffany from the shelter and took her to his home. Tiffany's attitude remained poor and she returned to Pamela's home in Norwalk a few weeks later. Although Tiffany's overall attitude improved slightly when she returned to Norwalk, she and Pamela continued to have problems in their relationship.

In January 1995, Tiffany and Pamela were in a physical altercation causing Tiffany to suffer bruises and a cut to her ear. On February 27, 1995, Pamela wrote

Michael a letter and told him it would be best for Tiffany to live with him. Tiffany began living with Michael the following March and has since shown marked improvement.

On March 27, Michael filed this modification action seeking to eliminate his child support payments for Tiffany. Pamela resisted and sought an increase in Michael's child support payments. The district court determined there had been a substantial change in circumstances regarding Tiffany and that it would be best if she remained in Michael's custody. The court modified the custody and child-support provisions of the parties' dissolution decree to award primary physical care of Tiffany to Michael. Pamela appeals.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

In child custody cases, the governing consideration is the best interest of the child. *In re Marriage of Moore*, 526 N.W.2d 335, 337 (Iowa App. 1994). To change custody set by a dissolution decree, the party seeking modification must establish by a preponderance of the evidence conditions have so materially and substantially changed since the decree the child's best interests make the requested change expedient. *In re Marriage of Jahnel*, 506 N.W.2d 473, 474 (Iowa App. 1993). The

parent seeking to change custody must prove an ability to minister more effectively to the child's well-being. *Moore*, 526 N.W.2d at 337. This heavy burden comes from the principle once custody has been fixed, it should be disturbed only for the most cogent reasons. *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 213-14 (Iowa App. 1994). When a child is of sufficient age, intelligence, and discretion to exercise an enlightened judgment, his or her wishes, though not controlling, may be considered by the court, with other relevant factors, in determining child custody rights. *In re Marriage of Hunt*, 476 N.W.2d 99, 101 (Iowa App. 1991).

On our de novo review, we believe the district court correctly found a substantial change in circumstances warranting transfer of Tiffany's physical care to Michael. Pamela and Tiffany have a tumultuous relationship that has threatened the health and safety of Pamela, Tiffany, and Krystal alike. While in Pamela's care, Tiffany has displayed violent temper outbursts which have led to physical confrontations between Pamela and Tiffany on more than one occasion. Pamela has described Tiffany's behavior as uncontrollable and, prior to the modification action, agreed it was best for Tiffany to live with Michael.

Since moving to Boone with her father, Tiffany's behavior has become less volatile and she has taken substantial steps toward repairing her damaged self-image. She is doing well in school, involving herself in both academic and extracurricular activities. Both Tiffany and Pamela have begun to work toward a stronger

relationship and enjoyed an extended visit together in Norwalk last summer. In light of the vast improvement Tiffany has shown while under Michael's care, we believe the district court's transfer of physical care to be in Tiffany's best interest.

While Tiffany's expressed desire to remain with Michael is not the sole factor motivating our decision, we are influenced by Tiffany's strong preference in this regard. *See In re Marriage of Hunt*, 476 N.W.2d 99, 101 (Iowa App. 1991). The district court was impressed with Tiffany's candor and sincerity on the issue and found her to be a mature fifteen-year-old capable of making a responsible decision as to her living situation. Tiffany's preference, combined with the improvement she has shown while living with Michael, demonstrate the substantial change in circumstances necessary to modify a prior custody determination. Although we would prefer not to separate Tiffany from Krystal, we believe the disintegration of Pamela and Tiffany's relationship provide good and compelling reasons to justify separation. This separation will ultimately promote the long-range interests of both sisters. *See In re Marriage of Will*, 489 N.W.2d 394, 398 (Iowa 1992).

We affirm the decision of the district court.

AFFIRMED.