

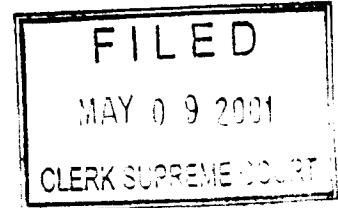
IN THE COURT OF APPEALS OF IOWA

No. 1-258 / 00-0671

Filed May 9, 2001

**IN RE THE MARRIAGE OF THOMAS P. REDING
AND JODY L. REDING**

**Upon the Petition of
THOMAS P. REDING,**
Petitioner-Appellee,



**And Concerning
JODY L. REDING,**
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Robert J.
Curnan, Judge.

Jody Reding appeals a district court ruling denying her petition to modify
court-ordered conditions governing her physical care of the parties' minor child.

AFFIRMED.

Thomas A. Bitter, Dubuque, for appellant.

Todd J. Klapatauskas of Reynolds & Kenline, L.L.P., Dubuque, for
appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

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HUITINK, J.

1. Background Facts and Proceedings.

The Redings' marriage was dissolved on April 22, 1998. Jody was awarded physical care of the parties' child, Nicole. The original decree included these findings of fact:

(c) Last August the respondent [Jody] renewed a friendship with an individual [Bruce Dean] who has sexually abused a stepdaughter in his prior marriage as well as one of his wife's sisters. The allegations of his conduct destroyed his marriage and split his wife's family. The Court received personal testimony from both the perpetrator, the two victims and some family members. The allegations of such conduct at the time the respondent renewed her relationship are an absolute fact. In addition, the Court finds as a fact that the abuse actually occurred. Stated otherwise, the Court believes the victims in their description of the abusive events.

As a result, the court ordered:

Both parties are prohibited from allowing contact between Bruce D. and Nicole or discussing Mr. D. with her. Either party may, themselves, have contact with Mr. D. but shall avoid even the most minimal contact between Mr. D. and Nicole. If handled as intended, Mr. D. will be one of the millions of people Nicole has never seen or heard of.

Neither party appealed from this or any other provision of the decree.

On May 18, 1999, Jody filed a petition to modify the April 22, 1998 decree seeking elimination of the foregoing provision. In support of her request she alleged: "Said male friend (Bruce Dean) has sought intensive professional assistance to determine whether he is any threat to said child, and the Respondent is prepared to offer professional testimony accordingly."

At trial Bruce Dean denied the allegations of sexual abuse underlying the custodial condition at issue. Jody also offered testimony from Steven J.

Spiegelmeier, a licensed independent social worker with a master's degree in social work and psychology. Spiegelmeier testified concerning the results of his interview with Bruce Dean and a number of psychological tests he administered to Bruce Dean. Based on these results, Spiegelmeier testified that in his opinion Bruce Dean "did not constitute a danger from being a predatory or pedophilic offender." Spiegelmeier also testified that his findings and opinions were consistent with those of Dr. McEckron, an expert who evaluated Bruce Dean on behalf of respondent.

The district court, while acknowledging the qualifications and opinions of Jody's expert, nevertheless determined that Jody's evidence failed to establish the requisite change in circumstances justifying modification of the original decree. Jody's modification petition was accordingly denied.

On appeal Jody contends that the record establishes a substantial change of circumstances warranting the requested modification. She cites testimony indicating Bruce Dean poses no risk to Nicole and her intentions to marry Bruce Dean as evidence supporting the desired modification. She also argues that Bruce Dean's rights to due process of law are violated by the original decree's restrictive provisions.

II. Standard of Review.

In this equity action, our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Smiley*, 518 N.W.2d 376, 378 (Iowa 1994). We are not bound by the district court's findings, but we do give them deference

considering its opportunity to view, firsthand, the demeanor of the witnesses when testifying. 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 presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

III. The Merits.

Courts are empowered to modify the custodial terms of a dissolution decree only when there has been a substantial change in circumstances since the time of the decree, not contemplated by the court when the decree was entered, which was more or less permanent, and relates to the welfare of the children. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). The burden rests on the party seeking modification to establish such a change of circumstances by a preponderance of evidence. *Smiley*, 518 N.W.2d at 378-79. As in all cases involving the question of custody, our first consideration is the best interest of the child. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996).

Our review of the record leads us to the same conclusions reached by the district court. The expert testimony supporting Jody's modification request cannot be reconciled with Bruce Dean's history of sexually abusing children. Moreover, the probative value of the test results relied on by Jody's expert is diminished by the expert's concession that such test results are not a reliable indicator of future behavior. We are not inclined to subordinate Nicole's best

interests to Jody's marital preference by modifying the original decree under these circumstances.

Lastly, we decline to address Jody's contention that the change in her relationship with Bruce Dean constitutes a material and substantial change in circumstances or that Bruce Dean's constitutional rights were violated by the dissolution decree. These issues were not properly preserved for review. *See In re Marriage of Maher*, 596 N.W.2d 561, 567 (Iowa 1999) (only issues presented to and passed on by the trial court may be raised and adjudicated on appeal).

IV. Summary.

We have carefully considered all issues raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the district court is affirmed in its entirety.

AFFIRMED.