IN THE COURT OF APPEALS OF IOWA

No. 6-115 / 95-1630

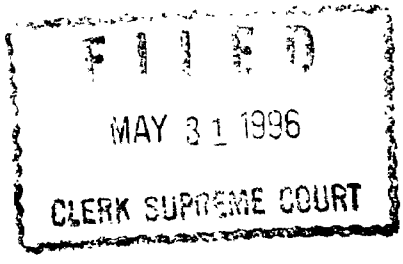
IN RE THE MARRIAGE OF LANEIS DAWN REEH AND GEORGE RICHARD REEH

Upon the Petition of
LANEIS DAWN REEH,

Appellee,

And Concerning
GEORGE RICHARD REEH,

Appellant.



Appeal from the Iowa District Court for Harrison County, Keith E. Burgett, Judge.

George Richard Reeh appeals the district court's decision denying his petition to modify the custody provisions of the parties' dissolution decree. **REVERSED AND REMANDED.**

Christopher Tinley of Root & Tinley, Council Bluffs, for appellant.

G. Elizabeth Otte, Council Bluffs, for appellee.

Heard by Cady, P.J., and Streit, J., and Peterson, S.J. * Vogel, J., takes no part..

* Senior judge from the First Judicial District serving on this court by order of the Iowa Supreme Court.

PETERSON, S.J.

George and Laneis Reeh were married on February 25, 1977. They had two children, Dustin who is not affected by this action, and Deidre who was born on November 14, 1980. The marriage was dissolved by decree entered on May 21, 1992. That decree provided for joint legal custody of Deidre and gave primary physical care to Laneis.

On June 2, 1995, George filed a petition requesting that the decree be modified. He alleged a change of circumstances based on Laneis's proposed move from Missouri Valley to Council Bluffs. During the trial, George called Deidre to testify in court. When it was determined the witness was Deidre, the court refused to allow her to testify, stating "We're not going to call a child as a witness in my case." George's attorney then made an offer of proof about what he believed Deidre's testimony would be.

At the conclusion of his offer of proof, Laneis's attorney said that she would also call Deidre as a witness but assumed the court would likewise deny her request. The court responded, "I am." Laneis's attorney then made an offer of proof concerning what she believed Deidre would say.

The court entered an order denying George's petition to modify the decree and in the findings of fact and conclusions of law stated: "Both parties requested that the court permit Deidre to testify, but it has been a longstanding policy on the part of this

judge to avoid the traumatic experience of having children pick and choose as between their mother and father with whom they prefer to live."

George contends that the trial court erred when it refused to allow Deidre to testify.

Our review of child custody modifications of a dissolution decree is de novo. Iowa R. App. P. 4. The court has the duty to examine the entire record and adjudicate anew rights on issues presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

A child's stated preference, while not controlling, is a factor to be considered by the court in determining custody arrangements. In assessing a preference, the courts look at, among other things, the age, educational level, strength of preference, relations with the family member, and the reasons given for the decision. *In re Marriage of Ellerbeck*, 377 N.W.2d 257, 258 (Iowa App. 1985); *In re Marriage of Larson*, 510 N.W.2d 892, 894 (Iowa App. 1982). The court has discretion to deny the request to have the children testify. *In re Marriage of Abkes*, 460 N.W.2d 184, 186 (Iowa App. 1990).

In our de novo review, we are unable to determine from the record that the court exercised its discretion in denying the request of the parties to have Deidre testify. Until the trial court explains why Deidre should not be permitted to testify, we are unable to determine the abuse of discretion question. Consequently, we reverse this matter and remand it to the trial court to make such determination. The

explanation must be sufficient to permit review of the trial court's discretionary action. We do not retain jurisdiction.

REVERSED AND REMANDED.