

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 25 1987

CLERK SUPREME COURT

IN RE THE MARRIAGE OF KARMEN RAE GATES
AND JOHN CLIFFORD GATES

36

Upon the Petition of	)	
KARMEN RAE GATES,	)	Filed February 25, 1987
Petitioner-Appellee/	)	
Cross-Appellant,	)	
And Concerning	)	
JOHN CLIFFORD GATES,	)	<u>6-421</u>
Respondent-Appellant/	)	85-1341
Cross-Appellee.	)	

Appeal from the Iowa District Court for Benton County (No. EQ #D608-12-79) - August F. Honsell, Jr., Judge.

Respondent husband appeals the trial court's denial of his application for modification of the child custody provisions of the parties' original dissolution decree. **REMANDED WITH DIRECTIONS.**

James R. Norris of J. R. Norris & Associates, Cedar Rapids, for respondent-appellant/cross-appellee.

Robert Koop Johnson of Whitfield, Musgrave, Selvy, Kelly & Eddy, Des Moines, for petitioner-appellee/cross-appellant.

Heard by Schlegel, P.J., Hayden and Sackett, JJ.

SCHLEGEL, P.J.

37

Respondent husband appeals the trial court's denial of his application for modification of the child custody provision of the parties' original dissolution decree. He has also filed a motion for a limited remand requesting a new psychiatric evaluation be presented to the district court for its use in affirming or modifying its ruling.

The marriage of petitioner, Karmen Gates, and respondent, John Gates, was dissolved by decree on June 14, 1980. Karmen was awarded permanent custody of the parties' two children. On April 9, 1985, John filed an application to modify the decree seeking physical custody of the children. On September 5, 1985, the trial court granted the parties joint legal custody and increased John's visitation rights, but left physical custody of both children with Karmen. The trial court relied heavily on a comprehensive custody evaluation prepared by Dr. Augspurger of the Family Mental Health Consultants in arriving at its decision. The trial court observed:

Under the direction of Dr. Terry L. Augspurger, a comprehensive custody evaluation was prepared for this litigation. It provides insightful information in regard to the persons and relationships involved. Dr. Augspurger's opinions have been accorded considerable weight in reaching the decision rendered in regard to this litigation.

This appeal was taken on September 16, 1985. On October 8, 1986, respondent filed a motion for limited remand so that the district court could consider a new psychiatric evaluation and report from Dr. Augspurger. This new report, dated August 11, 1986, concluded:

At this time it is my strong recommendation that physical custody of both Doug and Ann Gates be transferred to their father, John Gates. Irene Plogman concurs with that recommendation. I feel that the descriptions given today by Doug and Ann regarding their behavior and emotional status over the past year, coupled with their extremely negative attitudes towards their mother, would all strongly suggest that the situation in the mother's

home has not changed significantly over the past year, and even if it has changed, their perception of that environment has not changed. I feel that to force them to continue living predominantly in the mother's environment against their will is to invite rebellious acting out behaviors, anxiety and depressive symptoms, and a worsening of the relationship between them and their mother which is all likely to have long-term adverse effects on their personality development. I do not feel that any amount of individual or family therapy at this time is likely to change their perceptions of the mother or attitudes towards her if they are forced to remain in her physical custody. From a mental health standpoint, I definitely feel it would be in their best interest to transfer physical custody at this time. I feel that to force them to remain with their mother would be more detrimental than psychological trauma which could result from any potential action taken by the mother as a result of such custody transfer.

This report and recommendation was made pursuant to the trial court's requirement that the families be monitored for a one-year period. Obviously, this second report and recommendation is significantly different than the one the court used as the basis of its earlier decision.

Rule 12(g) of the Rules of Appellate Procedure permits us to remand the cause to the trial court for specific proceedings. We sustain respondent's motion for a limited remand. See In re Marriage of Gravatt, 365 N.W.2d 48, 49 (Iowa Ct. App. 1985). Accordingly, we direct the district court to consider the new psychiatric evaluation and recommendation, affirm or modify the court's prior decision as it sees fit, and receive evidence and make a recommendation on any further assessment of attorney's fees and costs.

REMANDED WITH DIRECTIONS.