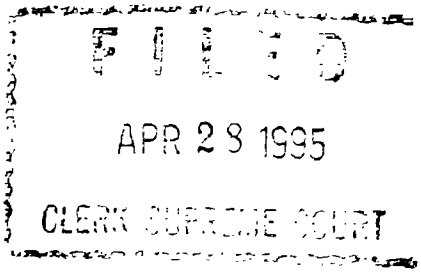
IN THE COURT OF APPEALS OF IOWA



No. 5-185 / 94-1385

IN RE THE MARRIAGE OF DEBORAH A. PETERSON AND DONALD P. PETERSON

Upon the Petition of
DEBORAH A. PETERSON,

Appellee,

And Concerning
DONALD P. PETERSON,

Appellant.

Appeal from the Iowa District Court for Webster County, Louie F. Beisser, Judge.

Donald appeals the district court's order denying his petition for modification of the dissolution decree requesting a change in physical care of the parties' minor child.

AFFIRMED.

Monty L. Fisher, Fort Dodge, for appellant.

Jeane W. Pearson of Price, Breen & Pearson, Fort Dodge, for appellee.

Heard by Donielson, C.J., and Hayden and Sackett, JJ. Cady, J., takes no part.

HAYDEN, J.

Donald and Deborah were divorced in 1984. The parties were awarded joint legal custody of their daughter, Amy, born September 28, 1978, and Deborah was awarded primary physical care. Donald was awarded reasonable visitation. The dissolution of marriage decree provided if Deborah left the state Donald's visitation would be not less than six weeks during the summer and one week during alternate Christmas holidays. Donald was ordered to pay child support of $160 per month.

Shortly after the dissolution Deborah and Amy moved to Florida. In 1989 the parties stipulated to a modification of the decree to increase Donald's child support to $225 per month.

In January 1994 Donald filed a petition for modification requesting a change in physical care. Donald alleged there was a substantial and material change in circumstances due to Amy's preference to live with him, her preference to live in Iowa rather than Florida, and desire to have frequent contact with her relatives in Iowa, and her best interests. In addition Donald requested that if he was awarded custody Deborah should pay child support according to the child support guidelines. Deborah resisted and requested Donald be ordered to pay one-half Amy's uninsured medical, dental, orthodontic, and optometric expenses.

Deborah was thirty-five at the time of trial. She lives in a two-bedroom townhouse near Tampa, Florida. She works as an office manager from 7:30 a.m. to 4:00 p.m. and earns a net monthly income of $1605.

Donald was forty-three at the time of trial. He lives in a three-bedroom home in Fort Dodge. He owns and operates an auto repair business in Fort Dodge and on average works a ten-hour day, from 8:00 a.m. to 6:30 p.m. Donald has a net yearly income of $19,655. His mother and five of his siblings live in Fort Dodge

Amy was fifteen at the time of the July 1994 trial and would be a sophomore when school started in the fall. She testified she wanted to live with her father because she did not like Florida, and she likes to be around her extended family in Iowa. Amy also stated she has a better relationship with her father than with her mother.

The court denied Donald's petition, finding he had not shown a material and substantial change of circumstances. The court ordered Donald's child support payments be increased to $368.72 per month, and ordered him to pay one-half of Amy's uninsured medical expenses. He was also ordered to pay $500 of Deborah's attorney fees. Donald appeals. He argues the trial court erred in finding a change in physical care was not in Amy's best interests.

Our review is de novo. IOWA R. APP. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of

the trial court, especially when considering the credibility of witnesses, but are not bound by them. IOWA R. APP P. 14(F)(7).

> To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (citing *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980)).

Donald argues Amy's preference to live with her father, along with complaints about her mother, constitute sufficient evidence to justify a custody change. We disagree. The question of custody is far more complicated than merely asking the child with which parent she wants to live. *In re Marriage of Jahnel*, 506 N.W.2d 473, 475 (Iowa App. 1993) (citations omitted).

Amy is blessed to have two loving parents. However, a child who receives proper care should not have custody disturbed in absence of cogent and compelling reasons *See Mikelson*, 299 N.W 2d at 671. As the trial court stated, "Deborah has been a steady, mature, and stable person. She has taken care of Amy's needs." Our de novo review of the evidence shows Deborah is a dedicated mother who

emphasizes the value of hard work, discipline, and responsibility. She is a good mother.

We hold Amy's preference and complaints do not constitute a change in conditions which materially and substantially affect her best interests. We therefore refuse to modify custody at this time.

Judgment of the trial court affirmed. Costs on appeal to be taxed to Donald.

AFFIRMED.