

FILED

MAY 23 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF DANIEL JAY BARR
AND WILFREDA DIANE GARRETT-BARR**

Upon the Petition of)
DANIEL JAY BARR,)

Petitioner-Appellee,)

And Concerning)
WILFREDA DIANE GARRETT-BARR,)

Respondent-Appellant.)

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9-145
88-1597

Appeal from the Iowa District Court for Story County
(DM 4167), Carl D. Baker, Judge.

Respondent appeals the trial court's order modifying
the dissolution decree. **AFFIRMED.**

Elizabeth S. Kruidenier of Parrish & Kruidenier, Des
Moines, for respondent-appellant.

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan &
Condon, Marshalltown, for petitioner-appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

PER CURIAM

The sole question before us is whether the ⁵⁰trial court was correct in determining a dissolution decree should be modified to transfer physical care of a female child Wanda born in January 1985 from her mother, appellant Wilfreda Garrett-Barr to her father, appellee Daniel Jay Barr. We affirm the trial court.

Our review is de novo. We give weight to the fact finding of the trial court but will not abdicate our duty to review de novo. We determine the issues presented upon the facts disclosed of record. Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa App. 1985). A parent who does not have physical care of the child but who is a joint custodian is benefited when seeking sole custody by the inference he or she has met the test to be named a joint custodian. See In re Marriage of Leyda, 355 N.W.2d 862, 864 (Iowa 1984). Dan has the burden to establish by a preponderance of evidence conditions since the dissolution decree was entered have so materially and substantially changed that Wanda's best interests make it expedient to transfer her physical care to him. Leyda, 355 N.W.2d at 865; In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983).

The first and governing consideration is the best interests of the child. In re Marriage of Melton, 256

N.W.2d 200, 205 (Iowa 1977). Dan must show a superior claim, based on an ability to minister to the child's needs more effectively than Wilfreda. The custody of children who are receiving proper care should not be disturbed in absence of cogent or compelling reasons. In re Marriage of Deck, 342 N.W.2d 892, 895 (Iowa App. 1983).

The changed circumstances must be permanent and continuous. In re Marriage of Gravatt, 371 N.W.2d 836, 838 (Iowa App. 1985). The trial court determined Daniel had met his burden and we agree.

The parties' marriage was dissolved in December 1985. Wilfreda between that time and September 1988 lived at seven different addresses and had relationships with at least three different men, including one recently released from prison and one marked with physical violence. She has had no stability in employment. She has used drugs. She exhibited behavior that gave the trial court the impression she would alienate Wanda from her father.

John Tedesco, Chief Psychologist at the Des Moines Child Guidance Center, evaluated the custody issue by agreement of the parties and recommended custody be transferred to Dan.

Dan, who will receive a Bachelor of Science degree from Iowa State University in 1990, married Rose, a registered nurse in October 1987. They have a stable relationship and Rose has a good relationship with Wanda.

Wilfreda does not generally deny these facts but contends more has been made of her relationships than should be. She emphasizes the fact that the child has been with her for some time, is adequately cared for, and has exhibited no signs of being harmed by her lifestyle.

Children deserve to live in a stable home. The fact the child does not now exhibit disturbed behavior as a result of the instability of her mother's life is no assurance she may not exhibit such behavior in the future. Wilfreda has not exhibited stability of lifestyle. Daniel exhibits the ability to give the child a more secure relationship. We affirm the trial court.

AFFIRMED.