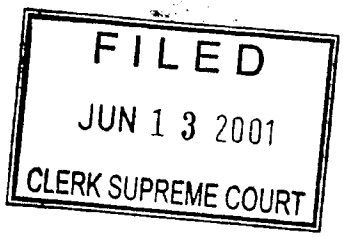
IN THE COURT OF APPEALS OF IOWA

No. 1-390 / 00-1886
Filed June 13, 2001



IN RE MARRIAGE OF CURT MITCHEL STANGE AND TAMMY SUE STANGE

Upon the Petition of
CURT MITCHEL STANGE,
Petitioner-Appellee,

And Concerning
TAMMY SUE SUMMERS, f/k/a TAMMY SUE STANGE
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

Tammy Summers appeals from the district court's modification of the parties' dissolution decree. **AFFIRMED.**

Grant C. Gordon of Cervantes & Gordon, P.L.C., Davenport, for appellant.

Christine Frederick of Zamora, Taylor, Clark, Alexander, Woods & Frederick, Davenport, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Tammy Summers appeals from the district court's modification of the parties' dissolution decree. She contends the district court should not have transferred primary physical care of the parties' daughter, Janae, to their father, Curt Stange. We affirm.

I. Background Facts and Proceedings. The marriage of Curt and Tammy Stange (now Tammy Summers) was dissolved by decree entered on November 25, 1997. The decree awarded the parties joint legal custody of their two children, Jacob, born November 1984, and Janae, born May 1988. By agreement of the parties, Curt was given primary care of Jacob while Tammy received primary care of Janae.

On July 20, 2000, Tammy filed a petition to modify visitation, indicating she had accepted a teaching position in Washington State. Curt filed an answer and a counter-petition seeking primary care of Janae. The court denied the parties' motions for temporary custody, finding no authority for granting such relief in a modification action.

Following trial, the district court entered an order in October 2000, modifying the decree by awarding primary care of Janae to Curt. The court found any benefits to Janae by the relocation to Washington were outweighed by the detriment occasioned by loss of contact with her father, brother and relatives on both sides of the family. The court found Curt offered Janae more stability and noted Tammy tended to put her own interests before Janae's. The court further determined Tammy's decision to relocate without consulting Curt was in

"flagrant disregard" of his joint custodial interests. The court finally determined Curt could better minister to Janae's needs.

Tammy appeals. She seeks a reversal of the court's primary care determination, an award of appellate attorney fees, and a modification of visitation and child support if she is allowed to retain Janae's primary care.

II. Scope of Review. We review the record de novo in proceedings to modify the custodial provisions of a dissolution decree. *Dale v. Pearson,* 555 N.W.2d 243, 245 (Iowa Ct. App. 1996). We give weight to the findings of the trial court, although they are not binding. *Id.*

III. Modification of Custody. The court can modify custody only when there has been a substantial change in circumstances since the time of the decree that was not contemplated when the decree was entered. *In re Marriage of Walton,* 577 N.W.2d 869, 870 (Iowa Ct. App. 1998). The change must be more or less permanent and relate to the welfare of the child. *Id.* Additionally, the parent seeking custody must prove an ability to minister more effectively to the child's well-being. *Dale,* 555 N.W.2d at 245. This strict standard is premised on the principle that once custody of a child has been determined it should be disturbed for only the most cogent reasons. *Id.*

There is no disputing that Tammy's move from Iowa to Washington was a substantial change in circumstances. Both parties so pled in their respective applications for modification. Additionally, Iowa Code section 598.21(8A) (1999), states that a court may consider a move of over one hundred and fifty miles to be a substantial change in circumstances warranting modification of a dissolution decree.

The question on appeal then is whether the court erred in granting primary physical care of Janae to Curt. The criteria for determining child custody in original dissolution actions are applied in modification proceedings as well. *In re Marriage of Courtade,* 560 N.W.2d 36, 37 (Iowa Ct. App. 1996). The best interests of the child are the governing factor in custody cases. *Id.* "In determining which parent serves the child's best interests, the objective is to place the child in an environment most likely to bring the child to healthy physical, mental, and social maturity." *Id.* at 38.

After careful consideration of all of the evidence, the district court concluded the children's primary care should be transferred to Curt. Upon de novo review of the record, we reach the same conclusion.

Curt has had substantial involvement in Janae's life. Janae will be denied this presence by her mother's decision to move a substantial distance from her father. This move will reduce Curt's involvement in her life. It will also take Janae away from her brother and extended paternal and maternal families. We agree with the district court that any benefit Janae receives from being closer to her maternal aunt and grandmother (who resides in Alaska) is substantially outweighed by the detriment it causes to her relationship with her father, brother and extended families.

The record also reveals that Tammy has offered Janae less stability than Curt. She has relocated on several occasions, while Curt has remained at the same residence. Tammy has been habitually tardy in attending Janae's activities and has often relied on others to provide for Janae's well-being without any advance notice. Tammy also chose to move her daughter to Washington, far

away from the rest of her family. While Tammy justifies her decision based on the increased salary she is earning in Washington, she does not acknowledge the increased costs of living there. Additionally, Tammy made no inquiries into securing a teaching position in Illinois where her salary would be comparable.

Finally, Tammy has not shown a willingness to support the relationship between Curt and Janae. In two consecutive years, Tammy made arrangements for Janae to be out of town on Father's Day, a day on which Curt was to have visitation with Janae. Tammy did not consult Curt about these arrangements until after they had been made. On one occasion, Tammy informed Curt that Janae would not be able to attend an event with him because she was being punished. Later that same day, Curt saw Janae at the event with a friend. Most telling is Tammy's failure to consult with Curt before deciding to move Janae halfway across the country. The evidence not only indicates that Janae made this decision without informing Curt, but that she intentionally withheld this information from him for some time afterward. Curt discovered Tammy's plans only after being informed of them by another parent and Tammy did not discuss the impending move with Curt until the middle of July, a month before the move was to occur.

For these reasons, Curt has shown a superior ability to minister to Janae's needs than Tammy. As a result, we affirm the district court's order granting Curt's application for modification of custody and awarding Curt primary physical care of Janae.

AFFIRMED.