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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

SHANE CLYDE WILLIAM WOOD, A Minor, by GARY WOOD, His Father and Next Best Friend,

Appellee,

v.

LINDA WOOD,

Appellant.

Filed May 20, 1977

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3-59725

Appeal from Johnson District Court - William R. Eads, Judge.

Appeal from order sustaining writ of habeas corpus in a child custody proceeding. Reversed and remanded.

James G. Thomas, of Anamosa, and James W. McGrath of Keosauqua, for appellee.

John M. Cashman, of Hawkeye Legal Aid Society, of Iowa City, for appellant.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

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Defendant Linda Wood seeks reversal of an order of the trial court which sustained plaintiff's petition for a writ of habeas corpus regarding the custody of their minor child, Shane. She challenges the denial of her motion to reconsider as well, on the same ground, i.e., that the trial court erred by refusing to allow her to present evidence of changed circumstances affecting a proper custodial determination. We reverse and remand for a full equity hearing.

Linda was granted a Missouri divorce decree on August 11, 1972, and was awarded custody of Shane, then less than one year of age. Linda and Shane moved to Iowa in January of 1974. The Missouri decree was modified on April 8, 1975, so as to grant custody of Shane to his father Gary (the plaintiff below). Linda appealed this determination and the modification was upheld by the Missouri Court of Appeals on March 9, 1976.

On January 20, 1976, Gary filed a petition for writ of habeas corpus in the Johnson County Iowa district court based on the Missouri modification order. The writ issued on July 20, 1976. Linda answered and hearing was held on July 22, 1976. At that time the trial court refused Linda's request to present evidence of an alleged material change in circumstances since the April 8, 1975, Missouri modification order. The writ was sustained and motion to reconsider was denied. A stay order has been granted by the Iowa Supreme Court, pending the outcome of this appeal. Plaintiff's unilaterial attempt to dismiss the action in the trial court after notice of appeal was filed is without legal significance. *See* rules 215, 342(d), Rules of Civil Procedure.

In Iowa, habeas corpus actions involving child custody are broad equitable proceedings. Lamar v. Zimmerman, 169 N.W.2d 819 (Iowa 1969), Helton v. Crawly, 241 Iowa 296, 309, 41 N.W.2d 60 (1950), Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511 (Iowa 1976).

It is well-established that a court of this state, in a habeas corpus proceeding, may modify the custody decree of a sister state upon a showing of changed curcumstances. Sampson v. Sampson, 189 N.W.2d 614, 616 (Iowa 1971), Eddards v. Suhr, 193 N.W.2d 113, 115 (Iowa 1971). By filing his petition, Gary invoked the jurisdiction of the court to determine the custody of Shane. By doing so he provoked Linda's response which alleged a material change in circumstances affecting custody. As recognized in Justice v. Hobbs, 245 Iowa 707, 708 (1954), in cases involving custody, the primary question, the child's best interests, is a question of fact. A court can not determine what is best for the child without hearing all the pertinent facts and testimony concerning present conditions. Helton v. Crawly, 241 Iowa 296, 326 (1950) citing Smith v. Smith, 4 Terry 268, 274, Superior Court of Delaware, 45 A.2d 879, 881. The trial court therefore erred in precluding Linda from offering evidence with respect to the allegations of changed circumstances occurring subsequent to April 8, 1975. We reverse and remand for a hearing in accordance with this opinion.

REVERSED AND REMANDED.