

IN THE COURT OF APPEALS OF IOWA

No. 2-559 / 92-513

IN RE THE MARRIAGE OF LINDA DIANE GIUSTI AND
DAVID MARTIN GIUSTI**FILED**

NOV 30 1992

CLERK SUPREME COURT

Upon the Petition of

LINDA DIANE GIUSTI,

Petitioner-Appellant/Cross-Appellee,

And Concerning

DAVID MARTIN GIUSTI,

Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Jefferson
County, Dan F. Morrison, Judge.

Wife appeals from the custodial provisions of the
district court's decision modifying the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

Michael R. Brown and Jane Roisen of Morrissey & Brown
Law Firm, Fairfield, for appellant.

Steven Gardner of Kiple, Kiple, Denefe, Beaver &
Gardner, Ottumwa, for appellee.

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

SACKETT, J.

Petitioner-appellant/cross-appellee Linda Diane Giusti appeals an order modifying her dissolution decree to dispense with split custody and granting physical care of her three children to their father, her former husband respondent-appellee/cross-appellant David Martin Giusti. Linda contends the best interest of the children demand that they be in her care. We affirm as modified.

David and Linda's marriage was dissolved in 1988. In their dissolution decree the trial court approved a stipulation David and Linda had entered that their children born in 1981, 1983 and 1984 be in their joint legal and physical care and custody. It was the intention of David and Linda that they split the time their children were in their physical care equally. Between the time of the dissolution and the filing of this action, the parties accomplished this in different ways. In 1991 David moved from Iowa to Washington State. David and Linda agreed the children would live one semester of the school year with Linda and one semester of the school year with David. The trial court refused to approve such an arrangement. Linda then filed a petition seeking to amend the decree giving her physical care and David cross-petitioned seeking physical care. The trial court, after an extensive hearing, awarded physical custody to David, ordered Linda to pay minimal child support of \$100 a month, and provided Linda have

visitation with the children during their Christmas break, every other spring break, and six weeks in the summer. Linda and David were to split the transportation costs. Linda has appealed contending she should be the custodian and David should be required to pay child support. David has cross-appealed suggesting the visitation should be modified to alleviate some of the transportation costs. We affirm on Linda's appeal and modify on David's cross-appeal.

Linda and David are both well educated parents who love their children, want the best for them, and have made their children a primary focus of their lives. The children clearly will be adequately cared for in either of their homes.

David's move from Iowa to Washington State created a change of circumstances that no longer enabled their split custody arrangement to be in the best interest of the children, and there is little argument that this arrangement needs to be modified. The obviously much more difficult question is which parent should be the custodial parent. The focal question is which party can provide the better home. See In re Marriage of Frederici, 338 N.W.2d 156, 160-61 (Iowa 1983).

David has remarried and his current wife is a senior buyer for Hawthorn Communications. She is able and willing to help him assume custody of the children. Linda has had other partners since the parties' separation, and at the

time of trial she was pregnant with another man's child. She has not, however, had the stability in these relationships that David has had.

Religion has an important place in the lives of both David and Linda. David worked while in Iowa as a religious director for two Catholic parishes. He has continued his association with the Catholic church but belongs to the Byzantine Catholic Church rather than the Roman Catholic Church of which he originally was a member. Linda has since the separation explored several religious groups. The religious groups she has been associated with are not as mainstream as is the Catholic church. Linda contends the trial court impermissibly considered the parties' religious affiliations in making the custody decision. We agree with Linda that the religious view of parents should not be considered in deciding custody issues. See In re Marriage of Rodgers, 470 N.W.2d 43, 45 (Iowa App. 1991). Because our review is de novo, we need not decide whether the trial court considered religion as a factor in deciding the custody issue. We do not consider the religious preference of either party or the fact that Linda has been seeking a satisfactory religious community in deciding the custody issue. See id.

In assessing the issue, we look only at the facts since the dissolution decree was entered. Since that time, both parties have assumed substantial responsibility for the

children's care. While we recognize each has made complaints about the other's relationship with the children, we do not find the complaints of a serious nature and basically disregard them in our review. We also have not considered the financial situation of either party.

We agree with the trial court that since the dissolution David has shown more stability in his life than has Linda. David is in what appears to be a good marriage, while Linda has been involved in more than one relationship with persons who have not shown the necessary concern for her children. We affirm the trial court's finding David should be the custodial parent.

David contends the visitation schedule imposes serious transportation costs on the parties. We are inclined to agree. In every second year the parties will have the expense of transporting the children from Washington to Iowa and back three times a year. These are not parties of substantial means. We agree with David that two trips should be adequate. We find Linda should have spring break in even years and Christmas break in odd years. We increase her summer visitation period in each calendar year from six to seven weeks. This provides the same contact with Linda but eliminates a trip every other year.

Each party shall pay his or her own attorney fees, and the costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.