FILED
APR 28 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-115 / 94-1232

IN RE THE MARRIAGE OF MICHAEL D. RIPSON AND MELODY ANNE EASTER-CLUTTER f/k/a MELODY ANNE RIPSON

Upon the Petition of
MICHAEL D. RIPSON,

Appellee,

And Concerning
MELODY ANNE EASTER-CLUTTER f/k/a MELODY ANNE RIPSON,

Appellant.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

Melody Easter-Clutter appeals a district court order modifying the parties' dissolution decree which placed the parties' child in Michael Ripson's primary physical care. **AFFIRMED.**

William A. Price, Des Moines, and Jeanne K. Johnson, Des Moines, for appellant.

Steven H. Shindler of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Melody appeals a district court order modifying the parties' dissolution decree which placed Angelica, born in May 1989, in Michael's primary physical care. We affirm.

The parties' marriage was dissolved by stipulated decree in December 1991. Angelica was placed in Melody and Michael's joint legal and physical care spending alternating weeks with each parent.

During pendency of the dissolution proceedings, Melody made several allegations that Michael sexually abused Angelica. The department of human services investigated and determined the allegations were unfounded. Melody also had two sexual abuse evaluations performed on Angelica. Neither showed evidence of sexual abuse.

The trial judge addressed these allegations in the decree: "The parties acknowledge and agree with the Court's findings in this matter, that all allegations of abuse, sexual or otherwise against [Michael] are unfounded, unproven and unestablished." The parties agreed to encourage maximum continuing contact with Angelica. The decree also provided, "[i]f either party and or any of the parties' family members take or takes any action to deny the other party maximum continuing contact with Angelica, the Court encourages the aggreived party to bring this matter to the Court's attention for prompt reconsideration.

Melody and her new husband, Jeff Clutter, live in Winterset with their two daughters. Michael lives in West Des Moines. Melody and Michael attended joint counseling from October 1992 through April 1993 to improve their communication and problem-solving skills regarding Angelica.. The family therapist, Jennifer Lock Oman, testified the parties were doing well in counseling and had acheived their goals. On April 14, 1993, Oman questioned the need for further counseling.

On April 16, 1993, Melody informed Oman of statements attributed to Angelica: "Daddy didn't hurt me this week; he didn't talk to me naughty-wise," and "Daddy naughty touches her bottom." Oman, a mandatory abuse reporter, referred the matter to the department of human services. Melody again took Angelica to Dr. Rizwan Shah for a sexual abuse examination, which resulted in no findings of abuse. The department determined the allegation of physical and sexual abuse was unfounded.

In October 1993, Michael filed a motion for reconsideration and petition for modification. He alleged the April 1993 abuse report demonstrated a continuing course of conduct by Melody in which she attempted to deny him maximum contact with Angelica. He requested reconsideration of the decree. He also alleged there had been a substantial change of circumstances warranting modification.

At the conclusion of the hearing the parties stipulated that the effect of travel between West Des Moines and Winterset on Angelica was not within the contemplation of the court at the time the decree was entered and that a continuation of joint physical

custody was not in Angelica's best interests. The district court noted two areas of concern: (1) Melody had not clearly refrained from making negative comments about Michael in Angelica's presence, and (2) Melody's continued false accusations of sexual abuse were an attempt to deny Michael maximum contact with Angelica. The court awarded primary physical custody to Michael.

Our review of this action is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

At the outset, we note the district court did not lack subject matter jurisdiction to reconsider or modify the custody provisions of the dissolution decree. *See In re Marriage of Sjulin*, 431 N.W.2d 773, 776 (Iowa 1988). The parties agree it is no longer in Angelica's best interests to continue joint physical custody; therefore our focus is on which parent can minister more effectively to her well-being. *See In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980).

A parent's interference with the development of a normal, healthy relationship between the child and the other parent may constitute grounds for modification of custody. *In re Marriage of Udelhofen*, 444 N.W.2d 773, 776 (Iowa 1989); *In re Marriage of Winnike*, 497 N.W.2d 170, 174 (Iowa App. 1992); *In re Marriage of Wedemeyer*, 475 N.W.2d 657, 658 (Iowa App. 1991). The custodial parent must be able to support the other parent's relationship with the child. *Wedemeyer*, 475 N.W.2d

at 659. A parent's inability to do so is detrimental to the successful mental, emotional, and social development of the child. *See In re Marriage of Manson*, 503 N W.2d 427, 429 (Iowa App. 1993).

Melody contends she was cooperative and did not interefere with Michael's custodial rights at any time. We strongly disagree. Although Melody cooperated in joint counseling, the record clearly shows she continued to pursue false allegations of sexual abuse despite the court's admonition.

In September 1992 Angelica began receiving treatment from Dr. Wyttenbach for a kidney valve defect. Melody called the doctor's office to request results from lab tests performed on Angelica on September 1. The nurse's notes from the conversation with Melody state:

> Mom goes on to explain that patient's father had 2 founded instances of sexually abusing the child and that they (parents) were divorced. Had 50-50 custody even though abuse complaints were founded. Wanted us to be aware of the situation for our own info. and to keep this confidential.

In April 1993 Melody made the new allegations, knowing that Oman, like Melody herself, is a mandatory reporter (Melody is a teacher). Without informing Michael, Melody took Angelica to see Dr. Rizwan Shah on June 7 for her third sexual abuse evaluation (SAE). Dr. Shah noted, "child has made statements to mom, ongoing since last SAE 7/15/91." Melody also told Dr. Shah that both previous reports were

founded but one was overturned in court. As with the previous examinations, this exam revealed no physical evidence of abuse.

These attempts at furthering her allegations of sexual abuse against Michael can only be seen as an ongoing attempt to interfere with Michael's relationship with Angelica. At the modification hearing Melody insisted the sexual abuse reports were founded, despite the trial court's finding and her admission to the contrary.

Meredith Easter, Melody's mother, testified she feels the abuse reports were founded. Her testimony also reveals open hostility toward Michael. Mrs. Easter testified Michael does not act in Angelica's best interests and doubts whether Michael loves Angelica. She also stated she does nothing to promote Angelica's relationship with her father.

Jeff Clutter testified he sees nothing in Melody's sex abuse claims that hurts the relationship between Angelica and her father. His testimony also shows neither he nor Melody take any steps to encourage the relationship between Angelica and Michael.

False claims of abuse never serve the best interest of a child and only interfere with the development of a normal, healthy relationship between a child and a parent. *See, e.g.*, ***Winnike***, 497 N.W.2d at 170. Melody and her family remain oblivious to the implications these allegations hold for Angelica. We condemn Melody's use of this tactic to gain a strategic advantage in this custody dispute. Her outrageous behavior not

only reveals serious character flaws, but also indicates she lacks the maturity and judgment to assume the responsibilities that attend an award of primary care.

Melody also contends she should be granted physical custody of Angelica so she will not have to be separated from her half-sisters. Melody relies on *In re Marriage of Orte*, 389 N.W 2d 373 (Iowa 1986), to support her position. Although there is a preference for keeping half-siblings together, a court may depart from the preference when separation will better promote the long-range interests of the child at issue. *Orte*, 389 N.W.2d at 374; *see also Quirk-Edwards*, 509 N.W.2d at 480.

We are convinced from our de novo review of the record that it is in Angelica's long-range best interests to award Michael primary physical custody. Michael is very supportive of Angelica's relationship with her mother and half-sisters. He encourages Angelica to call her sisters whenever she wants, and he has their pictures in his home for her benefit. Her teachers in Des Moines and her nanny report she is a well-adjusted and intelligent girl who is a natural leader. It is clear Michael will support Angelica's relationship with Melody, in spite of everything that has taken place, because that is what is in Angelica's best interests.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. The decision of the district court is affirmed. Each party shall be responsible for his or her own attorney fees. Costs of this appeal are assessed to Melody.

AFFIRMED.