

**IN THE COURT OF APPEALS OF IOWA**

No. 1-466 / 10-2118  
Filed August 10, 2011

**IN RE THE MARRIAGE OF  
MONA L. WOLFORD  
AND TROY WOLFORD**

**Upon the Petition of  
MONA L. WOLFORD,  
n/k/a MONA L. COUCH,**  
Petitioner-Appellant,

**And Concerning  
TROY WOLFORD,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Mark J. Smith,  
Judge.

A mother appeals from the district court's order modifying the parties'  
dissolution decree. **AFFIRMED.**

Robert S. Gallagher and Peter G. Gierut of Gallagher, Millage &  
Gallagher, P.L.C., Bettendorf, for appellant.

Catherine Zamora Cartee of Cartee Law Firm, P.C., Davenport, for  
appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Mona Couch and Troy Wolford married on March 26, 2000. The parties had two children together, born in 2000 and 2001. In the fall of 2003, Mona filed a petition for dissolution of the marriage. The parties stipulated to joint legal custody of the children with physical care to Mona, as Troy was about to be deployed to Iraq with the Illinois National Guard. The district court's dissolution decree, entered March 24, 2004, incorporated this stipulation.

Troy returned from Iraq in March 2005. Since his return, he has been active in the children's lives and has enjoyed regular visits with the children. From March of 2005 through November 2006, Troy lived with his parents on the weekends. During the weeks, he lived in a rented house close to his work. In November 2006, Troy moved into a house he purchased in Galesburg, Illinois. At the time of trial, he lived in this house with his fiancée, Teona King, whom he had been dating for roughly five years. Troy has his bachelor of arts in accounting. At the time of trial he worked as an assistant comptroller at Country Stone in Rock Island, Illinois, making \$55,000 per year.

After Mona and Troy separated, Mona moved into an apartment. She was not employed at the time and received help paying her rent from a male friend she met online. In November or December of 2003, she moved to Muscatine to live with John, her boyfriend of roughly three or four months. In February or March 2004, she became pregnant with John's child. She and John married in April 2004.

After three years, Mona divorced John and moved the children to the basement of the home of friends. That living arrangement lasted only two months before Mona was forced to leave. She testified she was kicked out because she discovered her friends were smoking marijuana in the house.

After leaving the home of her friends, Mona moved the children in with the parents of her boyfriend Richard. After living there roughly three months, Mona, Richard, and the three children moved into a mobile home owned by Richard. Mona lived with Richard just short of three years before they separated. Richard allowed Mona and the children to live in his mobile home for thirty days while Mona searched for housing. During this time, Mona was in a relationship with a man named Bryon. Bryon stayed with Mona and the children occasionally at Richard's mobile home. Mona then moved to a townhouse in Bettendorf, where she resided at the time of trial with Bryon and her three children—the two children involved in this appeal and the child from her marriage with John. Mona testified Bryon had moved in with her roughly eight months before trial.

Mona is a high school graduate. At the time of trial, she worked between three and fifteen hours per week for Bettendorf Community School District, where she had worked since November 2009. She earned nine dollars per hour as a food service substitute. Prior to that job, Mona had not worked since 2000.

On January 12, 2010, Troy filed a petition for modification of custody seeking physical care of the children. He alleged a substantial change in circumstances necessitated the modification, citing issues with the welfare and supervision of the children, the poor living conditions of Mona's home, Mona's

failure to communicate with him regarding the children's schooling, and Mona's frequent moves since the entry of the dissolution decree.

The district court placed physical custody of the children with Troy, finding Mona's lifestyle was chaotic and constituted a substantial and material change in circumstances justifying a modification of the original decree. Mona appeals.

## **II. Standard of Review**

We review proceedings to modify a dissolution decree de novo. *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006). We give weight to the district court's factual findings, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986).

## **III. Modification**

To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons.

*In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983).

After our de novo review of the record, we agree with the district court that Mona's chaotic lifestyle since her divorce from Troy constitutes a material and substantial change that makes a change in physical care expedient to protect the

children's best interests. We also find Troy proved an ability to minister more effectively to the children's well-being.

Since separating from Troy, Mona has moved her children to six different residences. Mona's frequent moves appear to be motivated by her relationships with and financial dependence on men in her life. Mona puts these relationships ahead of the best interests of her children, at times jeopardizing her children's needs for safety and stability.

Mona admitted at trial that her prior relationships had been dysfunctional, a fact demonstrated by Mona's frequent calls to the police in the years that preceded trial. Many of the calls involved her second husband, John, as Mona and John had a very volatile relationship after their divorce. Mona frequently called for officer assistance when she and John were meeting to exchange their child for visits. Though Mona testified the children at issue in this case did not go with her to exchanges, the record shows that oftentimes the exchanges took place at Mona's residence. Mona called police on multiple occasions stating John was harassing her or damaging her property. She called police regarding John allegedly abusing their child. She admitted to calling the Iowa Department of Human Services to report John two or three times. She called police and reported that when John arrived at her house to pick up their child, "he tries to talk to her other kids from his car." In another police report, an officer noted Mona called because John "walks into her house without knocking." Mona called the police regarding John so many times that one report notes, "Both parties were advised that this would be the last time we would respond." The volatility of

Mona's contacts with John put the children in a potentially unsafe environment, characterized by hostility and the presence of law enforcement.

The record suggests many of Mona's other relationships were problematic as well. Mona called the police several times about the friend with whom she and her children lived after she separated from John and also about a neighbor, both of whom Mona reported were threatening and harassing her. Mona testified the children were present during at least one of the incidents that resulted in a call to the police. Mona also called the police to remove a man from her house who would not leave after she allowed him inside. Mona told police he was either drunk or high and that her children were in the residence. Mona also testified she had concerns about her boyfriend Richard's drinking toward the end of their relationship. Given this testimony and the evidence contained in her calls to the police, it is clear Mona's relationship choices had a negative effect on her ability to provide for her children's safety and stability. We find this constitutes a material and substantial change in circumstances. *See In re Marriage of Daniels*, 568 N.W.2d 51, 55–56 (Iowa Ct. App. 1997) (finding concerns regarding the safety of the children to be an important consideration in deciding whether to modify physical care provisions).

Further, a review of the record suggests Mona made decisions that were not in her children's best interests. On September 24, 2009, an anonymous caller reported to the police that Mona had left her children home alone. Mona testified that the evening of this incident she had gone to a neighbor's "to grab a Pepsi and came back 10 minutes or so, 15 tops." The district court found Mona's

testimony in this regard was not credible. We give deference to the district court's findings in this regard.

The record shows Mona failed to provide for the children's physical care on more than one occasion. Troy testified that when Mona dropped the children off, they were often sick. He testified the illnesses were often ongoing and he would have to take them to the doctor during his weekend visits.

Mona also failed to adequately address one of the children's academic issues. Though a teacher suggested the child may have ADD, Mona did not have the child tested. Further, although Mona agreed to employ a tutor to help the child with reading, Mona admitted at trial the tutor was a student teacher who saw the child at most twice during the summer. The record demonstrates Mona's choices frequently failed to provide for the best interests of her children.

Given this evidence, we find Troy proved he can minister more effectively to the children's well-being. Mona testified that Troy had a good relationship with the children and was involved in their lives. Troy is employed full-time and can provide for the children without reliance on others. *See In re Marriage of Williams*, 589 N.W.2d 759, 762 (Iowa Ct. App. 1998) (finding that although we place great emphasis on a child's emotional stability, physical and financial stability are also important considerations). Troy has maintained a stable job and home. Troy regularly attended the children's school-related and extracurricular activities.

We find the district court's decision to modify the decree to award Troy physical care is in the children's best interests, as Troy can better assist the children in reaching healthy physical, mental, and social maturity. We find this to

be true even though it separates the children from their half-sibling. See *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993) (finding the presumption that siblings should not be separated is not conclusive and circumstances may arise where separation is in the best interests of the children). We affirm the district court's modification of the decree.

Costs on appeal are taxed to Mona.

**AFFIRMED.**