

IN THE COURT OF APPEALS OF IOWA

No. 1-950 / 11-1112
Filed February 1, 2012

**IN RE THE MARRIAGE OF
JEFFREY JAMES FERGUSON
AND HEATHER FERGUSON**

**Upon the Petition of
JEFFREY JAMES FERGUSON,**
Petitioner-Appellee,

**And Concerning
HEATHER FERGUSON,**
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn,
Judge.

A mother appeals a ruling modifying the physical care provision of a
dissolution decree. **AFFIRMED.**

Douglas W. Beals of Moore, McKibben, Goodman, Lorenz & Ellefson,
L.L.P., Marshalltown, for appellant.

John J. Haney of Hinshaw, Danielson, Kloberdanz & Haney, P.C.,
Marshalltown, for appellee.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

A mother appeals a ruling modifying the physical care provision of a dissolution decree.

I. Background Facts and Proceedings

Jeff and Heather Ferguson married and, in 2002, had a daughter. When they divorced in 2004, they agreed Heather would assume physical care of the child, subject to visitation with Jeff.

Over the next few years, Heather was involved in several relationships, some of them unstable.

In 2010, Jeff petitioned to modify the decree. Following a hearing, the district court granted the petition, citing Heather's pattern of poor relationships with men, the child's spotty school attendance while in her care, the child's assumption of "emotional responsibility for the welfare of the family," and certain other circumstances. The court ordered a gradual transition of the child to Jeff's care.

II. Analysis

On appeal, Heather contends that Jeff did not establish a material and substantial change of circumstances since the decree was entered or superior caretaking ability. See *In re Marriage of Rierson*, 537 N.W.2d 806, 807 (Iowa Ct. App. 1995) (articulating the standard that must be met in order to change the custodial provisions of a dissolution decree). Reviewing the record de novo, we disagree. See *id.* (setting forth standard of review).

As noted, Heather was involved in a series of troubled and troubling relationships. The first involved domestic abuse. The second was also volatile

and ended dramatically when, following an argument, Heather threatened to harm herself with a knife. Heather conceded her daughter was present during this incident and was shaken up by it.

Heather's third relationship was with a man who secretly abused alcohol and who fell down the stairs while intoxicated and while holding Heather's child from her second relationship. Although Heather immediately ended her involvement with this man, she soon allowed a fourth man to move into the family home. There was no evidence that Heather or the children were physically harmed by the fourth man, but the pattern of her relationships prompted the district court to voice a concern about the "emotional stability of the environment" in which the child was being raised.

We agree with the district court that the first three relationships were not healthy for mother or child. The second, in particular, was nothing short of traumatic for the young girl. Notably, that relationship spanned two years and, by Heather's own admission, was marred by verbal and mental abuse.

Also of concern was the child's school attendance. The child missed thirty-two days when she was in first grade and several days in second grade. Some of these absences resulted from standard childhood illnesses such as pink eye and fever. But, by the mother's own admission, others were feigned. On the days of feigned illnesses, Heather did not call the child's bluff and insist she attend school.

There is also evidence to support the district court's finding that the child assumed "emotional responsibility" for the welfare of her family. Jeff's mother testified that the child was "living her life through her mother as a stressed little

girl and not like a little eight-year-old girl.” She noted that the child was aware of police calls to her mother’s home and expressed concern about child support, both of which were not “eight-year-old concerns.” Jeff similarly testified that the child was “a well-adjusted kid” but did not need “to be living as a young adult.”

We are also troubled by evidence that Heather failed to communicate with Jeff about the child’s welfare or foster communication between the child and Jeff. See Iowa Code § 598.41(3)(c), (e) (2009) (stating that when determining what custody arrangement is in the child’s best interests, the court considers “[w]hether the parents can communicate with each other regarding the child’s needs” and “[w]hether each parent can support the other parent’s relationship with the child”). For example, she did not inform Jeff that she intended to move from Marshalltown to Altoona and did not answer his telephone calls. She also acknowledged that she did not encourage the child to call Jeff when the child was in her care. These factors persuade us that the court acted equitably in finding a substantial change of circumstances.

We turn to whether Jeff established himself as the superior caretaker. See *Rierson*, 537 N.W.2d at 807 (“The party seeking to take custody from the other must also prove an ability to minister more effectively to the children’s well being.”). The record reveals that he did. Jeff’s relationship with the child was described as comfortable, and Heather could not point to any specific defects—other than Jeff’s work schedule—that would impede his ability to provide for the child’s needs. With respect to his schedule, Jeff conceded his hours as an electric journeyman could be long, but stated he had not performed overnight work for years and his mother, who was in town and retired, could assist in the

child's care. He also noted he could provide a "[h]ouse free of violence" and meet the child's social, moral, and material needs "a little bit better" than Heather. He testified it "would be a mandatory thing really to make sure that [the child] talks to her mom whenever she wants to" and stated he would "[h]ave her call [Heather's] home so [the child could] talk to either [Heather] or [the child's younger half-sibling]." While Heather cites the child's relationship with this half-sibling as a reason to reverse the modification decision, we conclude the other factors discussed above outweigh this sibling bond. See *In re Marriage of Jones*, 309 N.W.2d 457, 461 (Iowa 1981) ("[C]ircumstances may arise which demonstrate that separation may better promote the long-range interests of children.").

We affirm the district court's modification of the physical care arrangement.

AFFIRMED.