

IN THE COURT OF APPEALS OF IOWA

No. 8-188 / 07-1539
Filed June 25, 2008

**IN RE THE MARRIAGE OF RHONDA HENDRIX
AND STEVEN HENDRIX**

**Upon the Petition of
RHONDA HENDRIX,**
Petitioner-Appellant,

**And Concerning
STEVEN HENDRIX,**
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

Rhonda Hendrix appeals from the district court order modifying the parties' child custody arrangement to grant Steve Hendrix physical care of the parties' youngest child. **AFFIRMED.**

Craig M. Dreismeier of Hannan & Dreismeier, P.L.C., Council Bluffs, for appellant.

Michael Gallner, Council Bluffs, for appellee.

Heard by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Steve and Rhonda Hendrix had two children during their marriage: Tyler, born in 1990, and Steven, born in 1994. After they divorced, and while living in Arizona, they filed a parenting plan that essentially provided for joint physical care of the children.

The children spent the summer of 2004 in Iowa with their parents and grandparents. At the end of the summer, Steve and Tyler returned to Arizona. Rhonda and Steven remained in Iowa. In light of the circumstances, Steve filed an application to modify the parenting plan. He sought physical care of Steven.

The district court ruled that “the parties shall continue to maintain joint legal and physical custody of the minor children of the parties.” However, the court modified the times set forth in the joint parenting plan. In salient part, the court awarded Steve parenting time with Steven at all times except during Steven’s summer vacation.

On appeal, Rhonda makes the following argument:

The trial court erred in determining that the parties to this action should continue to exercise shared physical care of their son, Steven. The court further erred in awarding the father physical care of their son during the school year. Physical care of Steven should be placed with his mother subject to reasonable visitation with his father.

The parents stipulated to a substantial change of circumstances requiring a modification of the Arizona parenting plan. See *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa Ct. App. 1998) (setting forth modification standards). Therefore, the only issue before the district court and before us is which parent

could render better care. See *Melchiori v. Kooi*, 644 N.W.2d 365, 369 (Iowa Ct. App. 2002).

The district court relied on the recommendation of Steven's guardian ad litem that Steve receive physical care. That recommendation was based in "big part" on Steven's preference to live with his father and his stated reasons for that preference.

A child's preference is less of a consideration in a modification action than in an original custody decision. *In re Marriage of Jahnel*, 506 N.W.2d 473, 475 (Iowa Ct. App. 1993). In assessing the preference, "we look at, among other things, [the child's] age and educational level, the strength of his preference, his relationship with family members, and the reasons he gives for his decision." *Id.*

Steven was twelve years old at the time of trial and entering the seventh grade. The guardian ad litem described him as "very articulate and able to communicate his needs and wants and the reasons behind them."

Steven stated he wished to move to Arizona because he liked living there better, he had more friends there, and his brother and father live there. He saw Arizona rather than Council Bluffs as his home. Indeed, when Steve offered to move back to Council Bluffs to be closer to him, Steven told him not to because he wished to live in Arizona. While Steven's preference is not dispositive, his age, maturity, unwavering articulation of supporting reasons, and his ties to his brother entitle the preference to weight.

This leads us to the second factor cited by the district court, separation of siblings. The Iowa Supreme Court has expressed a strong interest in keeping siblings together. See *In re Marriage of Orte*, 389 N.W.2d 373, 374 (Iowa 1986).

Although Steven and Tyler were separated for most of the three years prior to the modification hearing, they lived together for the first eight years of Steven's life. Both Steven and Tyler told the guardian ad litem that they wished to be closer to each other. See *id.* (declining to separate siblings who were "close and interested in each other.").

We recognize Rhonda's concern about the language Steven used after spending time with his older brother and the fact that Steven was associating with his brother's seventeen and eighteen-year-old friends. This concern is more appropriately addressed through parental supervision rather than cross-country separation of the brothers.

We conclude the district court acted equitably in effectively modifying the Arizona parenting plan to grant Steve physical care of Steven.

AFFIRMED.