

IN THE COURT OF APPEALS OF IOWA

No. 9-192 / 08-1451

Filed May 29, 2009

**IN RE THE MARRIAGE OF TIMOTHY ALLEN MASTIN
AND ANGELA HICKS MASTIN**

**Upon the Petition of
TIMOTHY ALLEN MASTIN,**
Petitioner-Appellee,

**And Concerning ANGELA HICKS MASTIN, n/k/a
ANGELA HICKS VANCANNON,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Karen Romano,
Judge.

A mother appeals the modification of the physical care, visitation, and
child support provisions of her dissolution decree. **AFFIRMED.**

Jesse Macro of Gaudineer, Comito & George L.L.P., West Des Moines,
for appellant.

Eric Bidwell of Boliver & Bidwell Law Firm, Marshalltown, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Angela Mastin VanCannon appeals a district court ruling modifying a physical care arrangement.

I. Background Facts and Proceedings

Tim and Angela Mastin divorced in 2001. Under the decree, Angela was granted physical care of their child, M.M.

Angela subsequently remarried. She and her new husband had a child who drowned in 2002 after being left alone in a bathtub with then-two-year-old M.M. The Department of Human Services filed a child-in-need-of-assistance action which resulted in the removal of M.M. from Angela's care for approximately three weeks. The case was subsequently closed. Angela and her new husband had M.M. and three additional children in the home.

Tim also remarried. He lived in Marshalltown with his new wife and their two children.

In 2007, Tim petitioned to modify the physical care arrangement. Following a hearing, the district court granted the petition and transferred physical care of M.M. to Tim. Angela appealed.

II. Analysis

To prevail, Tim had to show a material and substantial change of circumstances not contemplated when the decree was entered and affecting the best interests of the child. *In re Marriage of Mickelson*, 299 N.W.2d 670, 671 (Iowa 1980). He also had to show an ability to minister more effectively to the child's well-being. *In re Marriage of Rierson*, 537 N.W.2d 806, 807 (Iowa Ct. App. 1995).

Angela argues that Tim's reliance on the death of her child as a basis for modification was misplaced, as it occurred more than four years before the modification petition was filed. Angela concedes, however, that the incident was relevant in assessing M.M.'s best interests. As this is the ultimate concern in any custody proceeding, we conclude the district court acted equitably in considering the death of M.M.'s half-sibling.

On our de novo review, we are persuaded that the death, together with other factors, reflected an ongoing absence of stability in Angela's household. Angela testified that she and her current husband had their differences. According to Tim, who testified about conversations he had with M.M., those differences sometimes "escalate[d] into fighting, screaming, throwing things." Additionally, Tim stated that Angela and her husband struck M.M. when wet purple paint from her bedroom ended up in her hair. While Angela minimized the tensions in her home and denied that she used corporal punishment, it is noteworthy that M.M. also recounted these incidents to a custody evaluator who spoke to her outside the presence of her parents. There was also evidence that M.M. worried about her younger maternal half-siblings. The custody evaluator characterized her as nurturing and opined that this seven-year-old child "carrie[d] a tremendous burden." We conclude that these factors established a substantial and material change of circumstances.

We are less persuaded by Tim's reliance on Angela's several moves after the divorce, as Tim also moved several times. Additionally, Angela testified that, despite the many changes in her residence, she kept M.M. at the same elementary school, going so far as to open enroll her when she moved two

blocks outside the school boundaries. There was also scant evidence that the moves adversely affected M.M.; the custody evaluator testified that M.M. “kind of treated the moves as matter of fact.” Finally, while Tim emphasized that he was purchasing a home at the time of trial, the record reflects that Angela was also ready and able to purchase the home she was renting, but was simply waiting for the landlord to make improvements. For these reasons, we conclude Angela’s moves did not show a substantial change of circumstances. We are similarly unpersuaded by evidence Tim presented of a lack of food in Angela’s home. The custody evaluator found Angela’s home stocked with food and the record contains no evidence that M.M. went hungry. Finally, Angela refuted evidence that she repeatedly did not get M.M. to school on time, presenting testimony that the child ate breakfast at school and often got sidetracked in getting to her first class. For the stated reasons, we have discounted these factors in our substantial change analysis.

We turn to the question of whether Tim established he was a superior parent. On this question, the custody evaluator stated:

Tim Mastin has stabilized his life. He quit excessive drinking and drugs; he learned a trade; he remarried; he has a solid/stable marriage; he has reorganized his life and value system; and he is a good father and a good provider for his family. His home is far more stable, predictable, and consistent for children.

While Angela takes issue with the evaluator’s opinions on the ground that the evaluator was paid by Tim, she acknowledged that Tim became a better parent after the dissolution decree was entered. Given his significant efforts to stabilize his life, we conclude Tim established that he was a superior caretaker.

We affirm the district court's modification of the physical care portion of the dissolution decree and the resulting modification of the visitation and child support provisions.

AFFIRMED.