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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Upon the petition of	)	
CONNIE McCREARY,	)	Filed November 22, 1978
Appellant,	)	
And Concerning	)	640 3-61642
NORMAN E. McCREARY,	)	
Appellee.	)	

Appeal from Polk District Court - Harry Perkins, Judge.

Appeal by the mother from an order which modified a dissolution decree by changing custody to the children's father. - Reversed.

William Knapp, of Stewart, Wimer, Hudson & Flynn, P.C., Des Moines, for Appellant.

Amanda Dorr, of Payton & Hearn, P.C., Des Moines, for Appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

OXBERGER, C. J.

Petitioner Connie McCreary appeals modification of dissolution decree changing custody of two children from Connie to respondent Norman McCreary. We reverse.

Before we can consider the merits, we must decide a jurisdictional issue - has Connie failed to perfect her appeal by filing a proper notice of appeal within the time required after entry of final judgment. On January 27, 1978, trial court entered its Findings of Fact, Conclusions of Law and Ruling on Norman's application for modification. Connie filed her Notice of Appeal on February 8, 1978. Two days later, February 10, 1978, trial court entered a Supplemental Decree of Modification. No appeal was taken from the Supplemental Decree. Norman contends the Findings of Fact, Conclusions of Law and Ruling was not the final judgment, and therefore only the Supplemental Decree could be appealed as of right. Crowe v. DeSoto Consolidated School District, 246 Iowa 38, 66 N.W.2d 859 (1954), is cited in support of this contention. In Crowe, the record disclosed only trial court's Findings of Fact and Conclusions of Law; the Conclusions of Law contained a provision allowing plaintiff's attorney to prepare a judgment or decree which was never done. 246 Iowa at 40. In the instant case, however, trial court initially entered Findings of Fact, Conclusions of Law and Ruling. This document contained a provision allowing Norman's attorney to prepare a Supplemental Decree. Trial court designated the February 10, 1978, decree as Supplemental because it was precisely that - supplemental to earlier final judgment. The January 27, 1978, decision was, therefore, a final judgment. Connie's appeal therefrom was timely filed.

Turning to the merits, we find Norman failed to meet the burden of establishing by a preponderance of the evidence sufficient change in circumstances to warrant taking the children from Connie's custody. After his divorce from Connie in 1973, Norman remarried and established a home in Cedar Rapids. Since her divorce from Norman, Connie has had several boyfriends, one of whom lived with her and the children for a period of time. There is a suggestion that this person is responsible for a fire at Connie's home. We find that Norman's

remarriage and Connie's relationship with other men are insufficient to necessitate a change in custody. See Hagen v. Hagen, 226 N.W.2d 13, 15-16 (Iowa 1975). All the evidence indicates that the children are bright and well-adjusted and that Connie assumed most of the parenting responsibilities.

REVERSED.

All judges concur, except Donielson and Snell, JJ., who dissent.

DONIELSON, J. (dissenting)

I dissent. In a **de novo** review of the evidence I come to the same conclusion reached by the trial court—that the best interest of these children is served by placing custody with Norman. It could not have been within the contemplation of the trial court at the time of the dissolution decree that Connie's relationships with men would create the "turbulent, violent and disturbing situation" the family was faced with. One boyfriend had struck Connie and Mike on at least one occasion. Another boyfriend was a suspect in the arson that seriously damaged the family home. Connie had received anonymous threatening notes, and her home and office were broken into. Finally, while I do not accord it much weight, I find some significance in the fact that both Mike and Karen, bright and articulate adolescents, expressed a preference to the trial court to live with their father. I would affirm the decree of the trial court awarding custody of Mike and Karen to Norman.

Snell, J. joins in this dissent.