FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-415 / 89-577

364

Jackson County No. D-5-1401

IN RE THE MARRIAGE OF MICHELLE I. ROCKWELL AND GEORGE W. ROCKWELL

Upon the Petition of **MICHELLE I. ROCKWELL,**

Appellant,

And Concerning **GEORGE W. ROCKWELL,**

Appellee.

Appeal from the Iowa District Court for Jackson County, Max R. Werling, Judge.

Appellant appeals the ruling of the district court which granted respondent's application for modification of the decree of dissolution entered for the parties. **AFFIRMED.**

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellant.

William B. Norton of Norton & Norton, P.C., Lowden, for appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J.

Petitioner appeals the ruling of the district court which granted respondent's application for modification of the decree of dissolution entered for the parties. The court modified the decree in order to award respondent physical care of the minor children. Petitioner claims the court erred in granting the application to modify. We affirm.

A decree of dissolution was entered for Michelle Rockwell and George Rockwell on September 23, 1988. They had three children during their marriage: Maria, born January 12, 1979; Jeremy, born July 2, 1980; and Megan, born September 10, 1982. The decree awarded joint legal custody to the parties and placed primary physical care with Michelle. George was given specific visitation rights and ordered to pay child support.

At the time of the decree Michelle lived in Davenport with her boyfriend, Dennis Donahue, and the children. Michelle worked in the office of the county clerk of court. Dennis was a truck driver. He had moved in with his parents and brother in rural Maquoketa.

One week after the decree was issued Michelle and Dennis moved with the children to Maine without telling George of their plans. Michelle did not inform George of their location for one and one-half months, and then gave him only a post office box number. Michelle, Dennis, and

the children share a two-bedroom apartment. The children must share a bed. The children are unsupervised for a couple of hours after they come home from school.

George filed an application for modification on December 6, 1988, because he had had no contact from the children since they moved. At the trial George's mother, Ethel Rockwell, testified that she could help care for the children for several months until George moved out and married again. George's fiance, Susan Taylor, testified that she was fond of the children. The court modified the decree to place physical care of the minor children with George. Michelle was given visitation rights and ordered to pay child support.

Michelle argues that George is actually attempting to appeal the dissolution decree after the time for an appeal. Michelle states that the same conditions exist as at the time of the decree, except that she has moved to Maine. According to Michelle, George was aware she might move out of state. She feels that the court disapproved of her relationship with Dennis. She points out that she was living with Dennis at the time of the dissolution.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have

little precedential value, and we must base our decision primarily on the particular circumstances of the parties *presently before us.* In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Appellant contends the modification of custody was improperly granted. The standards for granting modification of a custody decree are as follows:

> 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) (citing In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980)).

The appellee argues that whatever changes have taken place were within the contemplation of the trial court and therefore are not subject to modification. The most significant change in this instance is the move to the state of Maine. The record does suggest the decretal court might have been aware of a possible move to Florida. However, the court could not have been aware that Michelle

would fail to inform the children's father where they were going and provide him with their address when they arrived. The district court found that before the move Michelle had been using the visitation as a weapon against George. Once the move to Maine was completed, she continued to impede George's visitation. The most flagrant denial was her failure to provide George with a specific address for over five months. It is clear that when a decretal court provides for extensive visitation as it did here, a complete denial of any type of visitation is a substantial factor to be taken into consideration when determining whether this is a sufficient change in circumstances to warrant modification.

The trial court found several factors that made a change in custody necessary. The use of visitation as a weapon shows that Michelle is not as concerned for the children's well-being as she is for her own interests. There is also evidence to show that her boyfriend has been mistreating the children. This treatment makes the children fear the boyfriend, which cannot be a healthy situation. In addition, the children are sharing one bed and Michelle has shown no interest in changing this situation. The children have expressed a desire to live with their father and it is apparent that he could provide them with a stable home. While Iowa follows the rule that custody should be soon fixed, it seems clear that if the children are to have a relationship with both parents and a

stable environment, it should be fixed with the father. The trial court correctly found that the children's best interests require a change in custody.

AFFIRMED.