

FILED

AUG 26 1980

CLERK SUPREME COURT

483

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LINDA MARIE STANLEY & STEVEN LEE STANLEY

Upon the Petition of)

LINDA MARIE STANLEY,)

Petitioner-Appellee,)

Filed August 26, 1980

And Concerning)

STEVEN LEE STANLEY,)

Respondent-Appellant.)

0-182
3-64277

Appeal from Polk District Court - John N. Hughes, Judge.

Respondent father appeals from the denial of his application for modification of the child custody provisions of the parties' dissolution decree. - **AFFIRMED.**

James W. Carney, of Carney, Hudson, Williams & Green, Des Moines, for respondent-appellant.

Mark C. Smith, of Stamatelos & Smith, West Des Moines, for petitioner-appellee.

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

PER CURIAM

Respondent, Steven Lee Stanley, appeals denial of modification of child custody provisions. We affirm.

The marriage of the parties was dissolved in 1978 and Linda was awarded custody of the couple's two minor children. Steven did not contest custody at the time of dissolution. Steven married Janice and purchased a home and acreage in a suburban area. Problems with visitation have occurred as the decree specified inflexible Tuesday-Wednesday visitation rights for Steven. This has led to misunderstandings between the parents. Steven brought this action asserting changed circumstances and deterioration of Linda's performance as custodial parent warranted modification of the child custody. The trial court denied his application but modified his visitation rights to specifically include holidays and vacation time. Steven appeals the judgment. Our review of this equitable action is de novo. Iowa R. App. P. 4.

Section 598.21, The Code 1979, states changes in a dissolution decree are proper if "circumstances render them expedient." In child custody issues, the modification of a dissolution decree "requires a showing of a change in circumstances since the date of the decree which substantially relates to the welfare of the children and which was not within the contemplation of the parties and the court at the time the decree was entered." In re Marriage of Wagner, 272 N.W.2d 418, 421 (Iowa 1978). Additionally, the moving parent in a child custody modification proceeding must show a superior claim to custody based on the ability to minister not equally, but more effectively to the children's well-being. In re Marriage of Melton, 256 N.W.2d 200 (Iowa 1977). These tests must be met by a preponderance of the evidence. Iowa R. App. P. 14(f)(6).

Steven alleges six changes in circumstances to be 1) Steven's remarriage, 2) Linda's failure to support, 3) visitation difficulties, 4) Linda's alienation attempts, 5) physical abuse of children while in Linda's custody, and 6) harassment. Steven concedes most of these circumstances considered separately would not be sufficient to meet the standard imposed. Rather, he urges the cumulative effect of all conditions is sufficient to show substantial and material change of circumstance. In order for us to so consider his assertion all alleged conditions must be proved by a preponderance of the evidence. We find Steven to have failed in this burden on every circumstance alleged, except for his remarriage. This change in Steven's marital status standing alone does not establish a

material change of circumstance affecting the children. "[T]he remarriage of one or both divorced parents with the inevitable resulting effects on the lives of the children may or may not be sufficient to require a change of custody. Each case must be resolved on its own peculiar facts." Eddards v. Suhr, 193 N.W.2d 113 (Iowa 1971). The evidence in this case, does not reveal an effect on Linda's ability as custodial parent because of Steven's remarriage. Neither does Steven's remarriage affect his ability in parenting. Steven maintained a good relationship with the children before remarriage. The change since remarriage in relation to the children's well-being is mainly the home which Steven and his new family have acquired. While this atmosphere will broaden the children's experience, it is not sufficient to affect the custodial provisions of the original decree.

The trial judge considered past difficulties with visitation and ordered modification of the visitation provision. He admonished the parties to strictly adhere to this modification and to exert their best efforts in this regard for the best interests of the children. We reiterate that admonition.

Appellee's request for attorney fees is denied as such award is not authorized in modification proceedings. In re Marriage of Jensen, 251 N.W.2d 252 (Iowa 1978).

AFFIRMED.