

CLERK SUPREME COURT

Respondent-Appellant.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

PER CURIAM

Respondent-husband appeals from the denial of his application for modification of a dissolution decree in which he requested that custody of the parties' two children be transferred to him. On appeal, respondent asserts he has shown (1) that circumstances have changed so materially and substantially since the decree that the children's best interests make the transfer expedient, and (2) that he can more effectively minister to the children's well-being. We reverse the trial court's decree with respect to the issues of child custody and support, and affirm the decree in all other respects.

The decree dissolving the marriage of petitioner Diane Curtis and respondent Stanley Curtis was entered in October 1977. In accordance with a stipulation filed by the parties, custody of the parties' two minor children, Michael and Mark, was awarded to Diane.

In August 1979, Diane left Iowa to look for a job in Arizona, where her parents lived, and the parties agreed that the boys should stay in Iowa with Stanley and start school. In January 1980, Diane returned to Iowa on a permanent basis. When she requested that the boys be returned to live with her, Stanley refused. He did allow the boys to live with her during summer vacation, but once failed to return them after a weekend visitation. Diane filed an application to cite Stanley for contempt of court. Stanley, in turn, filed an application for modification of the decree.

At trial testimony was presented concerning Stanley's remarriage, his alleged neglect of the children's dental problems, and Diane's alleged mental problems and physical violence. The trial court found that both parties would be fit parents but that Stanley had not met his burden of showing that he could more effectively minister to the children's well-being. The trial court denied both Stanley's application for modification of the decree and Diane's application for contempt citation.

Our review of this case is de novo. Iowa R. App. P. 4. The question for us on appeal, as it was for the trial court, is whether Stanley, the noncustodial parent, "established by a preponderance of evidence that conditions since the court decree have so materially and substantially changed that the children's best interests make it expedient to award their custody to him." Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). The changed circumstances must be such as were not within the contemplation of the court when the former decree was entered, and they must be more or less permanent or continuous. Id. at 139.

Applying these criteria to the instant case, we conclude that Stanley has met the burden of proof required for a modification of the custody decree. An instability in Diane's behavior and living circumstances has been demonstrated which was not contemplated by the trial court at the time it rendered its decree. Subsequent to the decree, Diane has moved to Arizona, returning only for short visits with the children; married and divorced again; experienced emotional difficulties; and relocated in jobs from Arizona to Lenox to Bedford. We think that this behavior demonstrates Diane's proclivity to place her own personal interests ahead of the best interests of her children.

As in Thein v. Squires, 250 Iowa 1149, 97 N.W.2d 156 (1959), the mother in this case has taken "an extended vacation from the responsibilities of motherhood," and consequently the best interests of the children may be best served by removing them from her custody and placing them with the party who has provided care and a stable environment. See id. at 1158-60, 97 N.W.2d at 162-63; see also In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974)(citing factors to be considered in custody awards). Although our general rule is that custody should be quickly fixed and little disturbed, In re Marriage of Bowen, 219 N.W.2d

683, 687-88 (Iowa 1974), the lives of the children would be disrupted least in this case by transferring legal custody to their father, who has provided care, a home, and a successful family atmosphere for them since the time the trial court's decree was rendered. See Thein v. Squires, 250 Iowa 1149, 1158-60, 97 N.W.2d 156, 162-63 (1959)(mother was denied right to custody of her children because children had been established in a home of good care and moral training).

In accordance with this opinion, the trial court's decree is reversed with respect to the issue of child custody. The respondent, Stanley Curtis, is hereby granted the permanent care, custody, and control of the two children, Michael and Mark. The petitioner, Diane Curtis, is granted liberal visitation rights at such appropriate times and places as the parties may arrange. Due to the change in custody, the trial court's provision regarding child support is hereby voided. Diane shall not be responsible for making child support payments.

AFFIRMED IN PART; REVERSED IN PART.