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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-412 / 89-0354

IN RE THE MARRIAGE OF JODIE R. REISDORPH AND JAMES F. REISDORPH

Upon the Petition of

JODIE R. REISDORPH,

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Appellee,

And Concerning

JAMES F. REISDORPH,

Appellant.

Appeal from the Iowa District Court for Jackson County, John A. Nahra, Judge.

Respondent appeals the decision of the district court which denied his application for modification of the parties' decree of dissolution on the ground that respondent has not shown a substantial change in circumstances. **AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander & Preacher, Bettendorf, for appellant.

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

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J. 113

Respondent appeals the decision of the district court which denied his application for modification of the parties' decree of dissolution on the ground that respondent has not shown a substantial change in circumstances. Respondent claims that the court abused its discretion in denying the application to modify and denying him the physical care of the parties' minor child.

A decree of dissolution was entered on a stipulation on December 5, 1983, for Jodie R. Reisdorph and James F. Reisdorph. The decree placed sole care and custody of the parties' minor child, Joshua Reisdorph, born July 6, 1979, with Jodie. James was given visitation rights, which he regularly exercised.

In September 1985, Jodie and Joshua moved to Missouri because Jodie hoped to find better employment there. James had visitation during the summer of 1986 and at the end of this time refused to return Joshua. Jodie did not have the financial ability to contest this action. Joshua began school in Maquoketa in the fall of 1986. He did much better there than he had in Missouri.

Jodie eventually did find better employment in Missouri. She is now a consumer loan coordinator and earns about $20,000 per year. She is married to Mark Hudson, who works in an army munitions plant. James lives with his fiance, Peggy. Peggy has a child by a previous marriage, but this child lives with Peggy's parents.

James filed an application for modification of the decree of dissolution. He asked for joint legal custody and that physical care of Joshua be placed with him. He also asked that his child support obligation be terminated. The district court ordered that James and Jodie have joint legal custody of Joshua. The court found that James did not show a sufficient change in circumstances to modify the physical care of the child.

James appeals the decision of the court. He argues that physical care of Joshua should be placed with him. The court stated that it did not want to reward James for failing to return Joshua and failing to maintain his child support obligation. James contends that the court did not make its decision based on the best interest of Joshua. James also disputes the court's finding that he has an alcohol problem. James points out that Joshua has done very well in his care.

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 his application for modification of custody should have been granted by the trial court.

> 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 change in circumstances alleged by the appellant is primarily that Joshua has resided with appellant for two years and during that stay he seems to be doing better in school. It is clear that appellant brought about this alleged change through his own wrongdoing. Appellant's refusal to return the child to his mother cannot be a valid basis for a substantial change in circumstances. However, if due to the passage of time the child's best interests require that he be left where he is, we would have little choice but to comply.

In this instance there has not been such a substantial change in circumstances. The child's improvement in school

is a welcome change but is not so dramatic as to make it expedient to make the requested change. There is also not sufficient evidence to show that the improvement is due to living with his father rather than his mother or even to the change in school systems. The appellant has also failed to show that he would be better able to minister to the child's well being. The very wrongdoing that resulted in the child residing with appellant prevents this conclusion. In addition, appellant's failure to pay his child support shows he was not entirely concerned with his son's well being, but rather with his own interests. Even if it can be shown that appellant does not have a drinking problem by traditional standards, he does have a drinking problem in the eyes of his son, which can be seen from the child's statements to the psychologist. The child's perceptions are of primary concern. The period of residence has not been overly long. The mother has stayed in contact with the child and it is apparent that the child misses his mother. The appellee was entitled to custody of the child prior to this action and since that time has established a stable home, relationship, and employment. The change in circumstances is not sufficient to warrant a change in custody. The order of the district court is affirmed.

AFFIRMED.