FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF

IN RE THE MARRIAGE OF WILLIAM RAY NIEBUHR and LUANN MAY NIEBUHR

Upon the Petition of

WILLIAM RAY NIEBUHR,

Appellee,

And Concerning

LUANN MAY NIEBUHR,

Appellant.

Filed April 28, 1978

490
3-61025

Appeal from Linn District Court - Clinton E. Shaeffer, Judge.

Respondent appeals from decision and order denying her application to modify child custody provisions of dissolution decree. Affirmed.

Tom Riley and Iris E. Muehmore, of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for appellant.

Robert C. Nelson, of Ruffin, Nelson, Fassler, Kimm & Mitchell, Cedar Rapids, for appellee.

Robert VanHorne, of Terpstra, Wilkinson & VanHorne, Cedar Rapids, for the minor child.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent, Luann Niebuhr, appeals from an adverse decision and order in her action to modify the child custody provisions of the May 23, 1975 decree dissolving her marriage to petitioner, William Niebuhr.

At the time of the dissolution, William was 26 years old, Luann was 24 and their only child, Jeremiah, was four. Prior to the dissolution William had received a university degree in social work, was self-employed as a house painter earning $300 a month and to quote the trial court had become "quite religious." At the time of the original hearing, Luann had been periodically employed, was apparently drinking to excess and was living with another man. Shortly after the May 23, 1975 decree awarding custody of Jeremiah to William, those two moved from Cedar Rapids to reside at the New Life Center, a religious-communal facility in Des Moines. Luann remained in Cedar Rapids, moved into an apartment where she lives alone, solved her drinking problem and secured full-time employment, earning a net wage of $147 per week.

Luann sought to modify the original custody award by application filed March 31, 1977. Her application alleged as a material change in circumstances that William had adopted a philosophy that faith alone would avoid the necessity of medical and dental care, that as a result Jeremiah was not given proper medical and dental care, and thus the best interests of the child required a transfer of legal custody.

On appeal our review is de novo. Rule 4, Rules of Appellate Procedure. Our paramount concern must be the best interests of the child. Rule 14(f)(15), R. App. P. The party seeking to modify a custody award must show a significant, material and substantial change of circumstance which was not in the contemplation of the original trial court or the parties themselves at the time of the decree. Hagen v. Hagen, 226 N.W.2d 13, 15 (Iowa 1975). Ordinarily a change of circumstances which justifies modification is of a more or less continuous nature, not temporary. Spaulding v. Spaulding, 204 N.W.2d 634, 635 (Iowa 1973).

The record shows Jeremiah to be a happy, intelligent six-year-old who loves and is loved by both parents. William's move to the communal facility, while perhaps unusual to some, is consistent with the religious views he was known to have held at the time of the original decree. Upon our review of the record, we conclude that Luann's allegation that William believed in faith healing to the exclusion of medical and dental

care is not sufficiently established to mandate a change in custody. The record reveals that William does recognize the necessity of dental and medical care and Jeremiah has received such services. The necessity of such care in particular situations involves the exercise of the type of parental judgment entrusted to the custodial parent under the original decree. Luann has failed to establish sufficient basis for finding a failure on William's part to exercise such judgment within reasonable limits.

To the extent Luann complains on appeal that Jeremiah is not attending an accredited elementary school this too involves an area preferably to be entrusted to the judgment of the custodial parent. The record reveals that Jeremiah, while in William's custody, is attending the Kingsway Christian Academy. While the school is not state accredited, he is taught by certified teachers. This circumstance, if properly certified to the proper authorities, satisfies statutory requirements. See ch. 299, The Code. Moreover, an application for state accreditation of the school was pending at the time of the trial. While we are concerned with Jeremiah's educational needs, we find no reason to modify the original decree on this basis.

Lastly, we consider the suggestion that William's tendency to inculcate distrust for persons not associated with the New Life Center may serve to damage Jeremiah's relationship with Luann. Such potential is disturbing but presents no present ground for a change of custody. We deem it appropriate, however, that William's counsel advise him to avoid creating such impressions in Jeremiah. Compare, Huffman v. Huffman, 176 N.W.2d 859, 863 (Iowa 1970).

We have considered all arguments and claims presented and conclude the decision of the trial court should be affirmed.

AFFIRMED.