

**IN THE COURT OF APPEALS OF IOWA**

No. 0-106 / 99-855

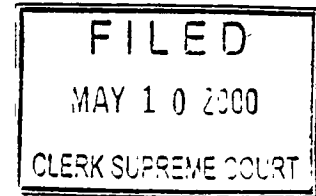
Filed May 10, 2000

**IN RE THE MARRIAGE OF BRYAN R. REMINGTON  
AND CONNIE L. REMINGTON**

**Upon the Petition of  
BRYAN R. REMINGTON,  
Petitioner-Appellant,**

**And Concerning**

**CONNIE L. EHLERET, f/k/a CONNIE L. REMINGTON,  
Respondent-Appellee.**



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Appeal from the Iowa District Court for Harrison County, James M. Richardson, Judge.

Petitioner appeals from the district court ruling denying his application to modify custody provisions of the parties' dissolution decree. **AFFIRMED.**

A.W. Tauke of Porter, Tauke & Ebke, Council Bluffs, for appellant.

Michael Winter, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Huitink, and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

The district court granted Bryan and Connie Remington shared physical care of their two sons. Bryan sought modification of the decree to award him primary physical care. The district court denied the application. On appeal, we affirm.

***I. Background Facts and Proceedings***

Bryan and Connie married and had two children: Matthew, born on June 11, 1983, and Wade, born on June 19, 1987. The couple divorced on January 14, 1998. The district court awarded the parties shared physical care of the children, with Bryan assuming primary care from February 1 until June 15 and August 15 until December 1 of each year, and Connie taking over care from June 15 through August 15 and December 1 through February 1.

Approximately three months after the decree was entered, Connie applied to modify the shared physical care arrangement to vest her with primary care. She alleged she had been denied visitation and Wade was experiencing emotional problems, which she attributed to Bryan. Bryan answered and countered with his own modification application, which also sought primary physical care. In her answer, Connie stated, "although the respondent would like to have custody of the children herself, the shared custody arrangement can work if petitioner and respondent could cooperate and if the court would adopt the visitation plan proposed by Counselor John Dickerson and by this answer."

The case proceeded to hearing only on Bryan's modification application. The district court denied the application on the ground Bryan failed to show any

material changes since entry of the decree. Bryan appealed and Connie cross-appealed. Connie later dismissed her appeal and did not file a responsive brief.

## **II. Change in Circumstances**

Our review of a modification proceeding is de novo. *In re Marriage of Beecher*, 582 N.W.2d 510, 512 (Iowa 1998). While we give weight to the fact findings of the district court, they do not bind us. *In re Marriage of Courtade*, 560 N.W.2d 36, 37 (Iowa App. 1996).

To modify a decree, the district court must find a substantial change in circumstances since entry of the decree not contemplated by the decretal court. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa App. 1998). "This change must be more or less permanent and relate to the welfare of the children." *Id.*

The district court found:

Other than some minor inconvenience to teachers and coaches, there has been no material change of circumstances concerning the boys since the decree. The minor inconveniences have been limited to communications by teachers and coaches to either Bryan or Connie. No evidence was offered that these inconveniences were ongoing or could not be easily corrected.

We agree with these findings and adopt them as our own.

We also note Bryan filed his application just four months after the decree was entered. Although the case was not tried until almost a year later, Bryan could point to few substantive changes during that period which the decretal court did not expressly consider. For example, Bryan vigorously argues he should receive primary care because the children expressed a preference to live with him. However, Bryan cannot rely on this factor because the children expressed the same preference to the decretal court. Bryan has not established that the

basis for this preference changed in the year and a half following entry of the decree.

Bryan also contends Connie has not facilitated visitation. This again was an issue considered by the decretal court. That court stated, "the parties are also reminded that it is their responsibility to build a relationship with their children and to support the other parent." The court further admonished the parties not to "interfere with, hamper or impede each other's relationships between the children nor use the children as weapons or treat them as property." The modification court reiterated these warnings.

Like the decretal and modification courts, we are concerned with the parties' unwillingness to work more amicably with each other to resolve problems with this admittedly complex physical care arrangement. However, the parties' communication difficulties at the time of the modification proceedings had not sufficiently changed since the time of the decree to warrant modification.

We conclude Bryan failed to establish a material and substantial change in circumstances not contemplated at the time of the decree. Accordingly, we affirm the district court's denial of his application.

**AFFIRMED.**