

FILED

AUG 25 1981

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF NORMAN FORREST FLEAGLE AND DOROTHY JOYCE FLEAGLE

Upon the Petition of	)	Filed August 25, 1981
NORMAN FORREST FLEAGLE,	)	1-169
	)	<u>3-86033</u>
Petitioner-Appellant,	)	
	)	
And Concerning	)	
	)	
DOROTHY JOYCE FLEAGLE,	)	
	)	
Respondent-Appellee,	)	

Appeal from Van Buren District Court.

James P. Reilly, Judge.

Petitioner-husband appeals from the dismissal of his petition to modify a dissolution of marriage decree granting custody of four minor children to respondent-wife. **AFFIRMED.**

J. W. McGrath, of McGrath & McGarth, Keosauqua, Ia., for petitioner-appellant.

Michael R. Brown, Fairfield, Ia., for respondent-appellee.

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

PER CURIAM

Petitioner-husband appeals from the dismissal of his petition to modify a dissolution of marriage decree granting custody of four minor children to respondent-wife. We affirm.

Petitioner-husband, Norman Fleagle, and respondent-wife, Dorothy J. Fleagle were granted a dissolution of marriage on May 13, 1977. Dorothy was awarded custody of their four minor children, Norman Todd, born November 24, 1966, Kevin Andrew, born May 13, 1969, Kelly Ann, born May 13, 1969 and Matthew Vernon, born October 8, 1970. Norman was ordered to pay child support of \$130 per month, with periodic increases keyed to the Consumer Price Index. Norman was further ordered to maintain life insurance policies on himself, with the minor children named as beneficiaries, to maintain hospital and medical insurance policies for the children and to pay for 18 years, the sum of \$55.93 per month to Dorothy as an installment property settlement. The total payments to be paid currently approximates \$204 per month. Norman's cost for the insurance is approximately \$116 per month. Norman was granted visitation rights at reasonable places and under reasonable circumstances.

Review of Norman's petition to modify the custody provision of the dissolution decree is de novo. In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977). We give weight to the finding of fact of the trial court, but will not abdicate our duty to review de novo and determine issues presented upon the facts contained in the record. Id. Of paramount importance on review of a petition for a change of child custody are the best interests of the children. In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977). Norman, as the noncustodial parent, has the burden of establishing by a preponderance of the evidence that conditions since the court decree have so materially and substantially changed that the children's best interests make it expedient to award him custody. Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). To prevail, Norman must show some superior claim, based on his ability to minister, not equally but more effectively, to the children's well-being than custodial parent Dorothy. Crary v. Curtis, 199 N.W.2d 319, 320 (Iowa 1972), reflects our dedication to the principle that children who are receiving proper care should not be disturbed in the absence of cogent or compelling reasons. Davis v. Davis, 237 N.W.2d 455, 458 (Iowa 1976).

To sustain the petition to modify a dissolution decree, petitioner must establish a

substantial and material change of circumstance since the date of the decree that was not within the contemplation of the parties when the decree was rendered. Hobson v. Hobson, 248 N.W.2d at 139. Norman implicitly asserts the following changes of circumstances as sufficient to warrant a modification of the decree of dissolution: Dorothy is working substantially more than she was at the time of the decree; Norman has remarried and his wife accepts the responsibility of having four minor children living with Norman and her; Norman contends that Dorothy is interfering with the free exercise of his reasonable visitation privileges; Dorothy, although a poor housekeeper at the time of the decree, has substantially digressed rather than improved in her housekeeping habits.

Notwithstanding Norman's other contentions, the cleanliness of Dorothy's home seems to be the gravamen of his petition. Two of Dorothy's three previous landlords testified to the filth Dorothy left behind when she vacated each apartment. The condition of each of the apartments was documented by various pictures taken by Norman and Kevin. Although the testimony and pictorial evidence indicates that Dorothy is a bad housekeeper, she contends the pictures do not fairly represent the normal state of affairs in her home. There was no testimony introduced that any of the children have suffered any ill effects from the manner in which Dorothy keeps house.

There was testimony that the Fleagle children are well adjusted in their current home in Brighton. All of the children are attaining above average marks in school. No testimony was given to the effect that any of the children have behavior problems, except Matthew when he returns from visiting his father.

In summary, Norman has failed to establish material and substantial changes in circumstances since the date of the decree of dissolution. Norman's remarriage alone is insufficient to warrant a change in custody. In re Marriage of Powers, 226 N.W. 2d 810, 812 (Iowa 1975). Evidence that the quality of Dorothy's housekeeping has substantially deteriorated since the dissolution was not introduced. Testimony establishes that housekeeping was never Dorothy's forte, but now it has worsened. Dorothy's present habits do not appear to threaten harm to the best interest of the children. Dorothy's alleged interference with Norman's visitation rights, if actually present, is not appropriately handled via a change in custody, especially since there is no guarantee that the situation will be substantially improved. Finally, Dorothy's

additional work responsibilities are not substantial and were reasonably foreseeable at the time of dissolution. In short there has been insufficient evidence introduced that there have been material and substantial changes of circumstances since the decree that negatively impact upon the best interests of the children. Nor has there been any evidence of extraordinarily cogent or compelling reasons for altering the present custody arrangement. We conclude that the trial court was correct in preserving the current custody status and denying Norman's petition for modification of the decree of dissolution.

AFFIRMED.