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IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

IN RE THE MARRIAGE OF VICKI M. SCOTT and ROBERT D. SCOTT

Upon the Petition of	)	
VICKI M. SCOTT,	)	Filed September 20, 1979
	)	
Petitioner-Appellee,	)	
	)	
and Concerning	)	
ROBERT D. SCOTT,	)	202
	)	<u>3-62864</u>
Respondent-Appellant.	)	

Appeal from Clinton District Court - James R. Havercamp, Judge.

Respondent-father appeals trial court's order denying his application for modification of the custody provisions of the final decree of dissolution of marriage.
AFFIRMED.

Gary J. Rolfes of Clinton, Iowa and Simon W. Rasche, Jr., of Camanche, Iowa, for appellant.

Don Senneff and Richard W. Farwell of Shaff, Farwell & Senneff, Clinton, Iowa, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-father, Robert Scott, appeals from trial court's order denying his application for modification of the custody provisions of the final decree of dissolution of his marriage to petitioner-mother, Vicki Scott. We affirm.

The parties' marriage of December 21, 1968, was dissolved by final decree filed June 14, 1976. Custody of the parties' two minor children, Tressia, born March 29, 1971, and Bobbi, born October 17, 1972, was awarded to petitioner subject to specified visitation rights afforded to respondent. Respondent did not seek custody. His request that trial court prohibit the petitioner's companion, E. A. Stammer (a/k/a Willie), from associating with the parties' children was denied.

On July 10, 1978, respondent filed his application for modification alleging that petitioner and her companion (Stammer) had committed acts of physical abuse upon the children and that petitioner and her companion had educated the children to write and use only the surname of petitioner's companion rather than the surname Scott. After hearing all the evidence, trial court denied respondent's application.

I. Our review of trial court's order is de novo. Iowa R. App. P. 4. We accord weight to the trial court's findings but must fulfill our responsibility to make an independent determination of the facts. In re Marriage of Moorhead, 224 N.W.2d 242, 244 (Iowa 1974).

II. An applicant seeking modification of the custody provisions of the decree of dissolution must prove, by a preponderance of the evidence, that there have been permanent, material and substantial changes in circumstances since entry of the decree effecting the welfare of the child(ren) which were not contemplated by the trial court at the time of its decree and which presently make modification expedient or necessary. In re Marriage of Snyder, 276 N.W.2d 402, 404 (Iowa 1979); Hobson v. Hobson, 248 N.W.2d 137 (Iowa 1976). The applicant also has the burden of proving that the proposed change in custody will more effectively serve the child(ren)'s well-being. In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977); Davis v. Davis, 237 N.W.2d 455, 457 (Iowa 1976).

Applying these principles to the evidence, we conclude the trial court properly found respondent had failed to sustain his burden of establishing that a change of custody was warranted. The evidence establishes that one child, Bobbi, had bruises on her buttocks in July, 1978, when respondent received the children for a three-week

visitation. We, however, believe that petitioner's testimony at trial provided a credible explanation for the presence of the bruises. There also is evidence that Bobbi had bruises on her cheeks one day in February, 1978. This incident was not explained. Testimony of a teenage babysitter regarding bruises on both children at other times has little persuasive value. Other testimony described the children as being well disciplined, well adjusted and performing well in school.

While respondent's concern for the welfare of his children is commendable and understandable, we find no showing that petitioner has abused the children. The evidence also fails to establish respondent's allegation that petitioner and her companion have educated and insisted the children go by the companion's surname. We thus conclude that respondent has made no showing of a permanent change of circumstances adversely and materially affecting the welfare of the minor children. Trial court's order denying his modification is affirmed.

Costs of this appeal shall be assessed to the respondent.

AFFIRMED.