FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF JONNIE MOELLER AND RHONDA MOELLER

Upon the Petition of)
JONNIE MOELLER,) Filed January 30, 1981
Petitioner - Appellant,)
And Concerning) 0-374 / 3-65243
RHONDA MOELLER,)
Respondent - Appellee.)

Appeal from Lyon District Court - Tom Hamilton, Judge.

Petitioner-husband appeals from modification of child custody transferring custody to respondent. - AFFIRMED.

Thomas O. Albers, of Fisher, DeWaay & Albers, Rock Rapids, for petitioner-appellant.

John F. DeHoogh, of Wolff, Shorley & DeHoogh, Sheldon, for respondent-appellee.

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

PER CURIAM

Petitioner, Jonnie Moeller, appeals from trial court ruling on modification of child custody transferring custody of child to respondent, Rhonda Moeller Carstensen. We affirm.

The burden was upon Rhonda to establish by a preponderance of the evidence that conditions since the dissolution decree have so materially and substantially changed that the child's best interest made it expedient to award custody to her. In re Marriage of Melton, 256 N.W.2d 200 (Iowa 1977). Rhonda, as non-custodial parent seeking custody, must also prove an ability to minister to the child's well being more effectively than Jonnie, the custodial parent. Zaerr v. Zaerr, 222 N.W.2d 476 (Iowa 1974).

Jonnie asserts the trial court did not primarily consider the best interests of the child and that certain hearsay evidence should not have been admitted. As our review of this matter is de novo, we re-examine all competent, admissible evidence and make our own findings. Iowa R. App. P.4.

Jonnie was awarded custody of Jennifer, the child, by the original decree filed February 14, 1974. At that time Rhonda was living apart from them in Minnesota. Since the decree, Jennifer was placed temporarily in the Winters' home, former employer of Jonnie for a short time. In early 1976, she was returned to the care of Jonnie but actually resided with his elderly parents. She has remained in their home until these proceedings. Jonnie lives near his parents on an acreage with and jointly owned by his brother.

Rhonda remarried in July of 1974 and resides with her husband in Minnesota. Their marriage and life style evinces an ample amount of stability. Rhonda has exercised her visitation rights consistently, and a good relationship between Jennifer and the Carstensens has been established.

Jonnie became involved in criminal activities in 1976. He pleaded guilty to a theft charge, became a state's witness against others involved and received a suspended sentence and probation. For a time he had to be placed in protective custody. Jonnie offered no plans to assume actual custody of Jennifer in the future.

We find Rhonda has met the burden of showing a material change in circumstance and a superior ability in parenting. At the time of the decree when custody was

awarded to Jonnie, there was no expectation that the actual and almost complete care of Jennifer would fall upon the paternal grandparents. Rhonda has exhibited matureness and a responsible nature since the decree. Jonnie, on the other hand, has shown little effort in establishing a full-time parent-child relationship.

Our only concern in transferring custody is removing Jennifer from the loving atmosphere of her young years. Rhonda, however, is the parent and capable of providing a nurturing environment. It is in the child's best interest to modify the original decree and award custody to Rhonda.

AFFIRMED.