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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

SHARON KAY UHL,	)	
Appellant,	)	Filed January 25, 1979
vs.	)	
GARY GENE UHL,	)	740 / 2-61696
Appellee.	)	

Appeal from the Woodbury District Court - D. M. Pendleton, Judge.

Petitioner appeals modification of dissolution decree changing custody of two minor children from herself to respondent. Affirmed.

Timothy W. Shuminsky of Shuminsky & Shuminsky, Sioux City, for appellant.

Charles T. Patterson of Gleysteen, Harper, Eidsmoe & Heidman, and N. Richard Willia, of Sioux City, for appellee.

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

PER CURIAM

This appeal by petitioner-mother, Sharon Kay Uhl, challenges trial court's decree modifying the parties' original decree of dissolution which had granted custody of the parties' two minor children to her. Trial court found there had been a material and substantial change of circumstances since entry of the original decree in 1973 and granted custody to respondent-father, Gary Gene Uhl. We affirm.

Sharon asserts that trial court erred in finding there was sufficient evidence to warrant modification. She specifically argues: (1) trial court's findings were based solely on her moral misconduct which does not preclude, without more, continuing custody with her and, (2) in any event, Gary has the burden of proof to demonstrate that moral misconduct has interfered with or has detrimentally influenced the growth of the children.

I. Our review is de novo. Rule 4, Rules of Appellate Procedure. We accord weight to trial court's findings of fact but are not bound by them. In proceedings for modification of custody the applicant "must prove some superior claim based on his or her ability to minister, not equally, but more effectively to the children's well-being." Hagen v. Hagen, 226 N.W.2d 13, 15 (1975). Further, we are bound by the principle stated in Jones v. Jones, 175 N.W.2d 389, 391 (1970), that:

> ". . . if the person having lawful care of a child at the time a change is sought has properly (emphasis in original) provided and supervised its social, moral and educational needs for a substantial period of time, and the child has become attached to its environment, a court is not justified in transferring custody to another except for the most cogent reasons."

II. A modification of custody cannot rest solely on moral misconduct, although such conduct is a factor deserving serious consideration. In re Marriage of Morton, 244 N.W.2d 819 (Iowa 1976). The record in this case clearly shows that trial court's decree was based on more than a mere finding of misconduct. Other factors of import are age and sex of the children, the environment in which they live and the environment to which they will be moved if a modification is granted. Morton, supra.

A detailed recital of all the evidence in this case should be avoided. However, important findings should be summarized.

At the time of entry of the original decree in January, 1973, Sharon lived in an apartment in West Des Moines, Iowa, and had been employed with retail credit organizations. Her hours of employment generally were 8:00 to 5:00 and persons were called into the home to supervise and administer to the needs of the two minor children, Lezlie Ann Uhl, born August 4, 1966, and Lana Jo Uhl, born June 28, 1970.

For the past three and one-half years, Sharon and the girls have lived in a mobile home in Sloan, Iowa. At the time of the modification hearing, Sharon's employment as a bartender required her to be out of the home two evenings per week. The record demonstrates she has been gone as often as three to four evenings per week. Sharon testified that, after ending her work, she often stayed in the evening for a drink with friends before returning home to prepare the evening meal. While some arrangements were made for supervision of Lezlie and Lana, the record shows that for the past year the two children frequently had been left alone in the home without adult supervision with instructions that they could call a neighbor if they had a problem. There is also evidence to support a finding that Sharon had a problem with alcohol during the year prior to the modification hearing.

The record demonstrates that Sharon used profanity profusely in conversation both in front of the children and directed at the children. Since entry of the decree Sharon has cohabited with at least three men. Each of these living arrangements continued for a period of several months. Several other men have stayed overnight in the home. Both of the minor children were aware that each of the gentlemen stayed in the home overnight and slept in the same bed with their mother.

The record establishes that respondent-father, Gary Uhl, has been employed since 1976 as business office Director at Iowa Lutheran Hospital in Des Moines, Iowa. This entails a five day work week from 8:00 to 5:00 with occasional evening or weekend work. His position is secure and involves no possibility of transfer to a different locale. Gary married Linda in 1974 and they have a son, Gary, Jr., born May 9, 1976. They live in a rented duplex with ample space for Lezlie and Lana. Linda is not employed outside the home, although at the time of the modification hearing she babysat for several children until 3:00 or 4:00 in the afternoon. Both Gary and Linda expressed a sincere desire and

willingness to accept the responsibilities and obligations which would accompany the custodial change. The record demonstrates that both Lezlie and Lana have a good relationship with Gary, Linda, and Gary, Jr.

While trial court was persuaded that the basic physical needs of Lezlie and Lana had been provided by Sharon and they appeared to be well-fed, properly clothed, and without discipline problems, the evidence taken as a whole supports trial court's decree changing custody to Gary. The record shows Sharon repeatedly disregarded her responsibilities to provide properly for and supervise the social and moral needs of the children; her conduct unfavorably reflects upon her judgment and ability to minister to them in a mature manner. We are persuaded the evidence shows a superior claim on Gary's part based on his ability to minister more effectively to Lezlie and Lana's well-being by providing better care, supervision and guidance. Hagen v. Hagen, supra.

We find trial court's order modifying the custody provisions of the parties' original decree is based on a material and substantial change of circumstances since entry of the original decree.

AFFIRMED.