

IN THE COURT OF APPEALS OF IOWA

No. 1999-136 (9-352) / 98-1661

Filed August 27, 1999

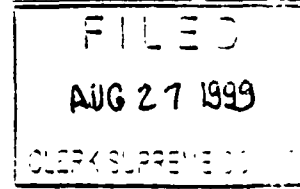
**IN RE THE MARRIAGE OF JERRY LEE CAMPBELL
AND KAREN DENISE CAMPBELL**

**Upon the Petition of
JERRY LEE CAMPBELL,**

Appellant,

**And Concerning
KAREN DENISE CAMPBELL,**

Appellee.



Appeal from the Iowa District Court for Taylor County, James W Brown,
Judge.

Jerry Campbell appeals from a district court order refusing to modify the
custody provisions of the decree dissolving his marriage to Karen Campbell.

AFFIRMED.

Martin L. Fisher of Fisher, Fisher & Fisher, P.C., Adair, for appellant.

Karen Denise Campbell, Campbellsville, Kentucky, pro se.

Considered by Huitink, P.J., Streit, J., and Habhab, S.J.*

* Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

HABHAB, S.J.

A father appeals the district court's denial of his application to modify the custody provision of the parties' dissolution decree. The father claims the children should be placed in his care. We affirm on appeal.

A decree of dissolution of marriage was entered in Iowa district court for Jerry and Karen Campbell on October 3, 1994. The parties had three children, Jeri, born in January 1986; Tangi, born in January 1987; and Leslie, born in October 1988. The parties were granted joint legal custody of the children, with Karen having primary physical care. Jerry was ordered to pay child support. He is in arrears on his child support obligation.

At the time the dissolution decree was entered Karen and the children were living in Kentucky. In September 1996, they came to the attention of the Kentucky Department of Social Services because the children had chronic head lice. Concerns also arose in January 1997, because Karen's live-in boyfriend, Jason White, was arrested on multiple counts of burglary. Karen agreed to become involved with family preservation services. In May 1997, the children went to live with Jerry for the summer, and the social services case involving Karen was closed.

Jerry was to return the children to Karen in August 1997. He took the children to Kentucky on August 18, 1997, the day he had arranged with Karen to deliver the children. When he arrived at Karen's house she was not home and there was a note on her door stating she had gone to pick up Jason from work. Jerry claimed he went by Karen's house about seven times that day and she was never home. Jeri and Tangi

000033

testified, however, they only went to Karen's house once on August 18, 1997. Jerry took the children to a motel in another town. He testified he went by Karen's house about four times the next day, and she still was not home. The children testified they did not go to Karen's home at all that day, but simply returned to Iowa.

Jerry did not return the children to Karen's care. Karen had little contact with the children while they were in Iowa. Karen has limited financial resources and does not have a vehicle or a telephone. In January 1998, Jerry filed an application for modification of the custody provision of the dissolution decree. He claimed he did not know Karen's address and she was served by publication. The children were aware of Karen's address and tried to give it to Jerry, but he told them he was not interested.

Jerry is a self-employed truck driver. He lives in a mobile home in Clearfield, Iowa. Karen has had several jobs, but has not held any of them for very long. At the time of the modification hearing she was in the process of moving into a double-wide mobile home owned by Jason in Campbellsville, Kentucky.

The district court found Jerry had attempted to mislead the court as to material facts in the case and concluded his credibility was impaired. Karen was found to be credible. The court determined Jerry failed to show a material change in circumstances or that modification was in the best interests of the children. The court denied his request to place the children in his physical care. Jerry appealed.

Modification proceedings are reviewed de novo. Iowa R. App. P. 4. In child custody cases, the governing consideration is the best interests of the children. Iowa

R. App. P. 14(f)(15). To change the custody set by a dissolution decree, the party seeking the modification must establish by a preponderance of the evidence conditions have so materially and substantially changed since the decree the children's best interests make the requested change expedient. *In re Marriage of Moore*, 526 N.W.2d 335, 337 (Iowa App. 1994). The parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well-being. *In re Marriage of Whalen*, 569 N.W.2d 626, 628 (Iowa App. 1997). This heavy burden comes from the principle that once custody has been fixed, it should be disturbed only for the most cogent reasons. *In re Marriage of Downing*, 432 N.W.2d 692, 693 (Iowa App. 1988).

Jerry claims there has been a substantial change in circumstances in that Karen has failed to adequately care for the children. It is clear the children suffered from chronic head lice, although this apparently occurred in both homes. Jerry asserts Karen's home was unstable and required the supervision of the Kentucky Department of Social Services. He also claims he can provide a better home for the children.

While both parents in this case are less than perfect, Jerry in particular has not acted in the children's best interests. Jerry's failure to pay child support has meant Karen and the children were forced to live in reduced financial circumstances. conduct shows a lack of concern for the children's well-being. In addition, Code section 598.41(1)(c) provides:

The court shall consider the denial by one parent of the child opportunity for maximum continuing contact with the other parent

without just cause, a significant factor in determining the proper custody arrangement.

Jerry attempted to deprive the children of maximum continuing contact with Karen. Jerry did not return the children after visitation, but kept them over Karen's protests. In addition, he limited their contact with her while he had them in his care. From our de novo review, we determine the district court properly denied Jerry's request to place the children in his primary physical care. He failed to meet his burden of proof.

We affirm the decision of the district court denying Jerry's application for modification of the custody provision of the parties' dissolution decree. No parties have requested appellate attorney fees. Costs of this appeal are assessed to Jerry.

AFFIRMED.