FILED
JAN 25 1979
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LARRY EDWARD THORNTON and CAROLYN SUE THORNTON SALTO

Upon the Petition of	)	
LARRY EDWARD THORNTON,	)	Filed January 25, 1979
Appellant,	)	
vs.	)	
And Concerning	)	780 3-61816
CAROLYN SUE THORNTON SALTO,	)	
Appellee.	)	

Appeal from Henry District Court - Harlan W. Bainter, Judge.

Appellant, husband, appeals trial court's modification of the parties' decree of dissolution so as to change custody of the minor children from the husband to the wife. Affirmed.

Cynthia H. Danielson of Danielson Law Office, Mt. Pleasant, and Linda J. Thompson, Springfield, Maine, for appellant.

Thomas S. Reavely of Mt. Pleasant, for appellee.

Heard by Oxberger, C.J., and Snell, Carter and Johnson, JJ.; Donielson, J. takes no part.

Petitioner, Larry Thornton, appeals from trial court's modification of a decree of dissolution so as to change custody of the minor children of the parties from their father, Larry, to their mother, respondent, Carolyn Salto. Pursuant to rule 4, Rules of Appellate Procedure, our review is de novo.

In matters of this character, a non-custodial parent seeking a change in custody must establish an ability to minister more effectively than the custodial parent to the well being of the children. In re Marriage of Pokrzywinski, 221 N.W.2d 283, 284 (Iowa 1974); Schulz v. Schulz, 195 N.W.2d 131, 132 (Iowa 1972). This must come about from a material and substantial change of condition relating to the children's welfare. In re Marriage of Brown, 247 N.W.2d 2, 4 (Iowa 1976).

While many of the matters relied upon by Carolyn to establish parental unfitness on the part of Larry are totally frivolous and lacking in evidentiary support, we believe there is sufficient evidence to warrant the action taken by the trial court. The record reflects that the children involved, Becky and Tammy, ages 16 and 14, encouraged their mother to seek a change of custody while visiting her in the summer of 1977. The petition for modification was filed in August of that year. While it was pending, Becky twice ran away from home during December of 1977. The second such occasion resulted in her moving in with Carolyn, where she resided until the disposition of this matter in the trial court.

Both girls testified that they were nervous, unhappy, and frightened while living with Larry, especially when he was drinking. Larry, who is remarried, testified that he could not control Becky and that she had become rebellious. Larry admitted to drinking heavily in the past and to physically abusing his present wife on occasion, but testified that he now drank quite a bit less. Both daughters testified that they would prefer to live with their mother (also remarried) because things were happier and more structured at her home. The girls felt that they got along very well with their mother's other children and stepchildren and with her new husband.

Larry suggests that the desire of his daughters for a change of custody results from Carolyn's efforts to turn the girls against him and to undermine his effort to apply necessary parental discipline. We recognize that in disputes of this type, children, if encouraged or permitted to do so, may seek to play the love of one parent against the discipline of the other. See in this regard, In re Marriage of Junkins, 240 N.W.2d 667, 668-

69 (Iowa 1976). But on our review of the entire record, we must conclude that regardless of the cause, the hostilities between Larry and the girls are real and are not likely to abate. While the desires of the children are not controlling, we believe that in the present case, given their ages and their relationship with Larry, they must be accorded substantial weight.

Considering the alternatives, we agree with the trial court that Carolyn now presents the better choice as custodial parent. While each case must be determined on its own facts, the principles here involved are quite similar to those applied to sustain a change of custody in In re Marriage of Junkins, supra, and In re Marriage of Woodward, 228 N.W.2d 74, 76 (Iowa 1975). To the extent that Larry complains on appeal that the trial court applied an improper legal standard in reaching the result it arrived at, we cannot conclude that the record sustains this contention. In any event, both this complaint and the claim that too much weight was given to the testimony of a psychologist who recommended in favor of a change in custody, are obviated by our de novo review. We give little weight to the testimony of the psychologist in this case. Nor, do we consider any change of circumstances disclosed in oral argument which has taken place since the time of the trial court's order. Our decision is without prejudice to Larry's right to present such circumstances to the trial court in his own petition for modification.

We have considered all claims presented, and conclude the trial court's decision should be affirmed.

AFFIRMED.