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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JANICE M. EVANS AND DALE O. EVANS

Upon the Petition of)

JANICE M. EVANS,) Filed December 21, 1978

Appellant,)

And Concerning) 751
3-62152

DALE O. EVANS,)

Appellee.)

Appeal from Pottawattamie District Court - E. F. Hanson, Judge.

Petitioner appeals modification of dissolution decree changing custody of three children from herself to respondent. - Affirmed.

Keith E. Burgett, Oakland, for Appellant.

Frank W. Pechacek, Jr., of Smith, Peterson, Beckman & Willson, Council Bluffs, for Appellee.

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

PER CURIAM

Pursuant to a November 1, 1976 dissolution decree terminating the marriage of petitioner Janice Evans and respondent Dale Evans, the parties' three daughters were placed in the custody of Janice. Approximately fourteen months later, Dale sought modification of the decree asking that custody be changed to him. Trial court granted the modification and Janice appeals. We affirm.

Our review is de novo; modification is allowed only where there has been a material and substantial change in circumstances since the date of the decree; the change of circumstances must relate to the children's welfare. In re Marriage of Brown, 247 N.W.2d 2, 3-4 (Iowa 1976). We conclude that the record supports the trial court's ultimate finding that since the original decree the environment in which the children reside with Janice has materially changed in a manner demonstrated to be detrimental to their welfare.

The children, while in Janice's custody since the decree, have been exposed to sexual immorality practiced by Janice in their home; illegal ingestion of controlled substances by Janice and friends; and commercial drug transactions carried on by Janice in the presence of the children. The record also reflects that Janice has, since the decree, aided and encouraged the excessive use of alcohol on the part of teenage companions under the age of 18. We reject the notion that personal vice can be successfully compartmentalized so as to have no adverse affect on the performance of parental duties. See Smith v. Holt, 225 N.W.2d 906, 910 (Iowa 1975). The evidence of Dale's ability to provide for the children's needs is adequate to support a superior claim on his part. Compare Zaerr v. Zaerr, 222 N.W.2d 476, 478 (Iowa 1974). We will not disturb the trial court's decision.

AFFIRMED.

Donielson, Snell and Carter, JJ., concur; Oxberger, C.J., and Johnson, J., dissent.

OXBERGER, C. J. (dissenting)

I agree, Janice's life style in living with Don Massey and smoking marijuana deserves serious consideration. In re Marriage of Morton, 244 N.W.2d 819, 821 (Iowa 1976). There is no indication, however, that her life style has adversely affected the children. They appear to be bright, healthy and well adjusted. Janice has been the parent primarily responsible for raising the children. I do not commend Janice's moral behavior but find it an insufficient justification for change of custody. Jacobs v. Jacobs, 216 N.W.2d 312, 314 (Iowa 1974).

Johnson, J., joins in this dissent.