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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PHYLLIS L. SILVER AND TOM W. SILVER

Upon the Petition of	)	
PHYLLIS L. SILVER,	)	Filed June 28, 1979
Petitioner-Appellant,	)	
And Concerning	)	
TOM W. SILVER,	)	163
Respondent-Appellee.	)	3-62449

Appeal from Linn District Court - Robert O. Osmundson, Judge.

Petitioner appeals from trial court modification of dissolution decree changing custody of parties' two minor sons to respondent. Affirmed as modified.

James E. Bennett, of Cedar Rapids, for appellant.

Tom Riley, of Cedar Rapids, for appellee.

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

DONIELSON, J.

A dissolution decree entered April 14, 1975, terminated the marriage of petitioner Phyllis Silver and respondent Tom Silver, and placed the custody of the parties minor children, Michael, born in 1969, and Alex, born in 1972, in Phyllis. On April 8, 1976, Tom filed an application to modify the decree to transfer custody to him, because Phyllis had left the state with the children without contacting him. Trial court denied this application on December 9, 1976, after a finding that Phyllis had returned to Iowa, remarried and was providing a stable environment for the children. Approximately 13 months later, Tom again sought modification of the decree asking that custody be changed to him. Trial court granted the modification and Phyllis appeals. We affirm.

Our review is *de novo*. Iowa R. App. P. 4. 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 finding that since the original decree there has been a material and substantial change of circumstances warranting a change in custody.

Phyllis has provided what can best be described as a nomadic existence for the children since the time of the first modification application. She and her second husband left Iowa precipitously in March 1977, and moved to various places in Missouri and Kansas, without informing Tom or allowing him any contact with the children. For one 3-month period, they camped out, sleeping in their car or out in the open. The oldest boy, Michael, attended some seven different schools. After Phyllis' second husband was incarcerated in St. Louis, Missouri, Phyllis and the children resided in Chicago at an emergency center operated by the Salvation Army, where they were located by a private investigator hired by Tom. When the children were returned to Tom's temporary custody in Iowa in January 1978, he had had no contact with them for 10 months. Tom has remarried and owns a country home in Jones County where he can provide a stable home atmosphere. The evidence of Tom's ability to provide for the children and minister more effectively to their needs is adequate to support a superior claim on his part. In re Marriage of Powers, 226 N.W.2d 810 (Iowa 1975). We will not disturb the trial court's decision.

Phyllis urges us to expand the time period and remove the restrictions placed on the visitation granted her by the trial court. It is clear that visitation was limited to eight hours on the first and third Sundays of each month, on the condition that Phyllis post a \$2500 bond or be accompanied by an independent party approved by Tom, because of Phyllis' past record of absconding with the children. Fears that this behavior may continue are of real concern to this court. We do not wish, however, to unreasonably restrict visitation so as to deny Phyllis any meaningful, continuing association with the children, even though we recognize that she has attempted to do exactly that to Tom, as evidenced by her past behavior. See In re Marriage of Morton, 244 N.W.2d 819, 821 (Iowa 1976). We, therefore, modify the visitation rights as follows: Phyllis shall have visitation rights on every third weekend from 12:00 noon Saturday until 5:00 p.m., Sunday, commencing on July 7, 1979. No bond shall be required to be posted, and the accompaniment of another person will not be required during the time of such visitation. Phyllis may not remove the children from the State of Iowa at any time during such visitation.

Phyllis shall also have visitation rights on Christmas, Easter and Thanksgiving in alternate years. Phyllis shall have the children on Thanksgiving, 1979, and Easter 1980. Tom shall have the children on Christmas 1979. On the holidays Phyllis is entitled to visitation, such visitation shall begin at 12:00 noon on the day before and terminate at 5:00 p.m. on the day of such holiday. If any such holiday falls on a regularly scheduled visitation weekend, Phyllis shall not be entitled to additional visitation rights to compensate therefore.

Visitation without the restrictions imposed by the trial court is granted Phyllis with the caveat that failure to comply with the terms herein set forth could result in sanctions more severe than those issued by the trial court in the modification decree.

Finally, Phyllis asks that attorney fees be awarded her on this appeal. There is no authority supporting an award of attorney fees on an application to modify a dissolution decree; they are specifically disallowed. In re Marriage of Jensen, 251 N.W.2d 252 (Iowa 1978).

AFFIRMED AS MODIFIED.