

IN THE COURT OF APPEALS OF IOWA

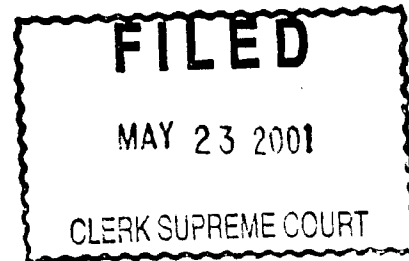
No. 1-212 / 00-1581

Filed May 23, 2001

**IN RE THE MARRIAGE OF ALAN FENTON YAHNKE
AND RHONDA SUE YAHNKE**

**Upon the Petition of
ALAN FENTON YAHNKE,
Petitioner-Appellant,**

**And Concerning
RHONDA SUE YAHNKE,
Respondent-Appellee.**



Appeal from the Iowa District Court for Davis County, E. Richard Meadows, Jr., Judge.

Alan Yahnke appeals from the district court's modification of the child custody provisions of the parties' dissolution decree. He contends the district court erred in awarding primary physical care of the parties' children to Rhonda Yahnke. **REVERSED AND REMANDED.**

Marci Tooman of Hopkins & Huebner, P.C., Des Moines, for appellant.

John Weber of McKay, Moreland & Webber, P.C., Ottumwa, for appellee.

Considered by Sackett, C.J., Huitink and Streit, JJ.

SACKETT, C.J.

Appellant, Alan Fenton Yahnke, seeks reversal of a district court decision modifying the custodial provision of the January 31, 1997, decree dissolving his marriage to Appellee Rhonda Sue Yahnke. At the time of the dissolution Alan and Rhonda agreed that they would share physical care of their children Ryan, born in 1986, and Jordan, born in 1989. Their agreement was approved in and made a part of the dissolution decree. Both parties lived in Bloomfield, Iowa, and the children moved between their homes on a weekly basis. Then in April of 1997, the year of the decree, Rhonda moved with her new husband to Eminence, Missouri, taking the children with her. Alan consulted an attorney who told Alan he could do nothing to keep Rhonda from leaving the state. Alan consented to Rhonda leaving with the children, but he continued to see the children on a monthly basis. Neither party sought a modification of the decree.

In February of 2000 Rhonda, her husband, and Ryan and Jordan returned to Bloomfield and moved into a home about a mile from where Alan and his new wife and their child reside. Shortly after the move Rhonda filed an application to modify the decree, asking that she be named the sole primary care parent. Alan then asked that the shared care arrangement be implemented. A hearing was held, and the district court found on April 19, 2000, that Rhonda had shown the required change of circumstances, and it was in the children's interests to be in her primary care. The court then modified the decree to award Rhonda primary physical care and ordered Alan to pay child support. Alan contends the decree should not have been modified and that the district court, in doing so, rewarded Rhonda for unilaterally taking the children to Missouri. We find Rhonda has

failed to meet the burden necessary to modify the decree, and we therefore reverse the district court. Because the record is insufficient to review the child support order, we remand to the district court for that purpose.

To change the custodial provision of a dissolution decree, Rhonda must establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983).

Rhonda has showed that circumstances have changed since the entry of the dissolution decree. She and Alan both have remarried. Alan and his current wife have a child, and a second child was to be born soon after the modification hearing. The custodial arrangement agreed to by Alan and Rhonda at the time of the dissolution and approved by the district court has not been followed only because of Rhonda's move to Missouri.

Modifying a decree requires more than a showing of a change of circumstances. It further requires Rhonda, the party seeking to be named the primary custodian, to prove she has the ability to minister more effectively to the children's well being. *In re Marriage of Spears*, 529 N.W.2d 301, 302 (Iowa Ct. App. 1994); see also *In re Marriage of Gravatt*, 371 N.W.2d 836, 838-40 (Iowa Ct. App. 1985). The burden to modify a dissolution decree is a heavy burden. See *Frederici*, 338 N.W.2d at 161. Rhonda must show the ability to offer care superior to the care the children would receive under the custodial arrangement in the dissolution decree. See *Spears*, 529 N.W.2d at 302, 303.

The district court found that physical custody had been given to Rhonda, and the court-ordered arrangement had actually changed three years earlier. The court went on to find it was in the children's best interest to leave them in the same physical care arrangement in which they had thrived for over three years. The court ordered Alan to pay child support and provided for specific visitation.

Rhonda testified that the arrangement for the children's care between the date of the dissolution and her move to Missouri did not work well. She said Alan agreed she could move to Missouri with the children. She said the children are doing well. Rhonda testified the only reason she wanted the decree changed was that if it were followed it would be too disruptive to the children's school and extracurricular activities.

The only evidence is that both Alan and Rhonda are good parents to their children. The children have a good relationship with their stepparents. While Rhonda lives five blocks from school and the boys are able to ride their bicycles there, it would appear that the distance of an additional mile would not preclude them from doing the same if they resided half of the time with Alan.

The only evidence of problems with the children changing physical locations before their move to Missouri are Rhonda's complaints that their personal items and school work were not always in the home where they were staying. She also testified there were problems getting the children's schoolwork completed. These are not problems of major magnitude, nor are they problems that would not be within the knowledge of the district court in approving the shared physical care agreement made by the parties. Further, there is no evidence that with the boys' ages and the close proximity of the parents' two

homes that any problems the children may experience in moving from home to home would outweigh their opportunity to have substantial and meaningful contact with both of their parents.

We recognize, as did the district court, that the children spent substantial time in their mother's care during the time she was in Missouri. During that time both parties honored their original agreement, and neither sought a modification. Alan maintained substantial contact with the children through visitation. To the parties' credit the evidence shows they are both supportive of the other's relationship with the children.

Rhonda has failed to meet the heavy burden necessary for modification of the custodial provisions of the decree. She has failed to show that the children would have superior care if she were the primary custodian. The agreement she made that was approved by the district court should stand. We reverse the district court's modification of the custodial provisions of the decree. The record is not sufficient for us to determine if there should have been a modification of child support, and what, if any, child support should be paid by one parent to the other. We remand to the district court to make that decision. We award no appellant attorney fees. Costs on appeal should be paid one half by each party.

REVERSED AND REMANDED.