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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARY CHAPMAN AND RONALD CHAPMAN

Upon the Petition of)
MARY CHAPMAN,)
Petitioner-Appellee,) Filed April 8, 1983
And Concerning)
RONALD CHAPMAN,) 2-504 / 3-68604
Respondent-Appellant.)

Appeal from Dickinson District Court - Charles H. Barlow, Judge.

Respondent appeals from the trial court's refusal to modify the custody provision of the parties' 1977 dissolution decree. AFFIRMED.

Rosemary Sackett of Sackett, Sackett, Hemphill & Howe, Spencer, for respondent-appellant.

James A. Clarity of Narey, Barbee & Clarity, Spirit Lake, for petitioner-appellee.

Heard en banc.

DONIELSON, J.

Respondent appeals from the trial court's refusal to modify the custody provision of the parties' 1977 dissolution decree. We affirm.

Our scope of review is de novo. Iowa R. App. P. 4; Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972).

I.

The marriage of respondent, Ronald Chapman, and petitioner, Mary Chapman, was dissolved in 1978. The dissolution decree placed the parties' one child in Mary's custody. The child, a girl born in 1973, was lived with Mary since the dissolution but has visited Ronald regularly and frequently.

In October, 1981, Ronald applied for a modification of the dissolution decree to transfer the child's custody to him. Mary responded by requesting a modification of the decree to increase her child support award.

The trial court refused to transfer the child's custody. The trial court found that Ronald had proved a change of circumstance, namely his remarriage to "a very stable, likeable and competent person." However, the trial court concluded Ronald had not established that the child would develop better in his care or that her best interests required the disruption of her present custodial status. In this connection the trial court noted that the child has thrived in Mary's home. The court increased Mary's child support award, as Mary had requested. Ronald has appealed, challenging only the trial court's refusal to place the child in his custody.

II.

A request for modification of a dissolution decree is governed by Iowa Code section 598.21(8) (1981). "A party seeking a change of custody must show a superior claim, based upon an ability to minister to the child's needs more effectively than the custodial parent." In re Marriage of Ivins, 308 N.W.2d 75, 78 (Iowa 1981) (citing

In re Marriage of Gutermunth, 246 N.W.2d 272, 274 (Iowa 1976)). "The best interests of the children involved remain here as in all cases involving the question of custody, the first and governing consideration." Hagen v. Hagen, 226 N.W.2d 13, 15 (Iowa 1975). The principal question for us is whether Ronald has carried his burden of proving "that conditions since the dissolution decree was entered have so materially and substantially changed that the [child's] best interest makes it expedient to award [her] custody to him." In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980). In considering this issue, we are guided by the following principles:

> The changed circumstances must not have been contemplated by the trial court when the decree was entered. They must be more or less permanent or continuous, not temporary, and must relate to the welfare of the children. Hobson v. Hobson, 248 N.W.2d 137, 139-40 (Iowa 1976). This heavy burden stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons. See In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977).

Id.

Ronald introduced evidence that his remarriage to Corbin has changed the circumstances under which custody was originally awarded to Mary. He contends that his new home environment is a more suitable one in which to raise Tina. However, remarriage and a new home are deemed to be matters which are forseeable when the decree is entered and do not establish a basis for changing custody. Mikelson, 299 N.W.2d at 673. While we commend Ronald for stabilizing and improving his lifestyle, we cannot find this to be a change of circumstances sufficient to modify the custody award.

Ronald also attempts to introduce evidence of Mary's moral misconduct. We have noted that moral misconduct may be a factor in determining a parent's fitness to have custody. In re Marriage of Dawson, 214 N.W.2d 131, 132 (Iowa 1974). As the court in Dawson noted, misconduct cannot be viewed in isolation:

> Other factors include the age and sex of the child, the environment in which the child shall live, the other characteristics of the one seeking custody, the ability to provide for the material, social, moral and emotional needs of the child, and whatever other matters the evidence in the particular case may disclose.

Id.

We believe that any moral misconduct which may have occurred in the instant case has not affected Mary's ability to minister to the best interests of Tina as a concerned parent, excluding the possible effect of the conduct itself as an example for the child. The trial court, which had the opportunity to hear all the evidence, found that:

> Tina is a well-adjusted child, enjoys school in the Harris-Lake Park School System, likes Lake Park, has friends there, loves both parents, and likes living at Paullina with her father and Corbin during the summer. She gets along well and likes Randy. She will not express a preference on where she should live on a permanent basis. From the entire record, it would appear that she would prefer to live with her mother during the school year, and her father during summer vacation. Overall, her health is good. She is a good student and likes art and reading. Both parents encourage this.

We see no reason on this record to reach a contrary conclusion. Based upon our de novo review, we find that the trial court properly denied respondent's application for modification of the dissolution decree awarding custody to petitioner.

AFFIRMED.