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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

MARY LEE McCLONEY,)

Petitioner-Appellee,) Filed March 31, 1980

vs.)

RONALD LEE McCLONEY,) 0-75
3-63994

Respondent-Appellant.)

Appeal from Union District Court - Robert O. Frederick, Judge.

Respondent appeals modification of child custody provisions in favor of petitioner. Reversed and remanded.

Richard R. Ramsy, Osceola, for respondent-appellant.

Paul J. Boysen, Jr., Creston, for petitioner-appellee.

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

PER CURIAM

Respondent, Ronald Lee McCloney, appeals modification of child custody provisions in favor of petitioner, Mary Lee McCloney. We reverse and remand.

The marriage of the parties was dissolved in 1977 and Ronald was awarded custody of the couple's two minor children. After the dissolution, Mary married the man she was living with at the time of her divorce and established a home with him. She then brought this action asserting changed circumstances warranted modification of the child custody award and trial court agreed. Ronald appeals the lower court's modification of child custody.

Our review of this equitable action is de novo. Iowa R. App. P. 4. Section 598.21, The Code 1979, states changes in a dissolution decree are proper if "circumstances render them expedient." In the child custody context, the modification of a dissolution decree "requires a showing of a change in circumstances since the date of the decree which substantially relates to the welfare of the children and which was not within the contemplation of the parties and the court at the time the decree was entered." In re Marriage of Wagner, 272 N.W.2d 418, 421 (Iowa 1978). Additionally, the noncustodial parent in a modification proceeding must show a superior claim to custody based on the ability to minister not equally, but more effectively to the children's well-being. In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977).

Mary's claim for modification rested on the changes in her marital status and her acquisition of a home. Those factors alone, however, do not establish superiority to minister to the children's well-being. Wagner, 272 N.W.2d at 421. Even if the original report of the guardian ad litem properly could be considered here, the changes that occurred were in the contemplation of the trial court and parties. Ronald's performance as custodial parent had not deteriorated. Although Mary's marriage rectified concerns of the decretal court, custody cannot be modified on that ground alone. To do so would allow the original decree to be provisional in effect.

We find Mary failed to show modification was rendered expedient by the changed circumstances and hold the trial court erred by modifying the original decree. Accordingly, we reverse the trial court and reinstate the original child custody provisions. Because the record is insufficient to allow our determination of Ronald's

modification claims on limitation of Mary's visitation rights or her ability to pay child support, those matters are remanded to the trial court for hearing and entry of an appropriate order.

REVERSED AND REMANDED.