FILED
DEC 27 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-686 / 90-1044

IN RE THE MARRIAGE OF MELVIN TEMPLE, JR. AND TERESA TEMPLE

Upon the Petition of
MELVIN TEMPLE, JR.,

219

Appellee,

And Concerning
TERESA TEMPLE,

Appellant.

Appeal from the Iowa District Court for Marion County, Michael J. Streit, Judge

The parties' 1988 dissolution decree placed their two young sons in Melvin's primary physical care. Teresa later sought a modification of the decree, asking the children be transferred to her primary physical care. The district court declined to modify the decree, and Teresa has appealed. Teresa once again asks the children be transferred to her primary physical care. **AFFIRMED.**

Brad McCall of the Brierly Law Office, Newton, for appellant.

Gayle Nelson Vogel of Johnson, Lane & Vogel, Knoxville, for appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J.

Melvin and Teresa Temple were married in 1983. They have two children, boys born in June 1985 and January 1987.

The marriage was dissolved in December 1988. The dissolution decree placed the two children in joint legal custody and in Melvin's primary physical care. The decree cited Melvin's greater "stability" as a factor favoring him as primary physical custodian.

In 1989 Teresa filed an application to modify the dissolution decree. She asked the children be transferred to her primary physical care.

After a hearing, the district court denied Teresa's application. Teresa has appealed. We affirm.

Teresa once again argues the children should be transferred to her primary physical care. She alleges since the 1988 dissolution decree, Melvin has abused alcohol, been fired from a job for theft, had "serious" relationships with four different women, attempted suicide, and left the children with numerous different caretakers. She also alleges she has entered into a stable marriage and would be the better parent

Melvin requests attorney's fees on appeal.

Our review of this modification action is de novo. Iowa R. App. P. 4. In equity cases like modification, we give weight to the trial court's findings of fact, especially concerning credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(7).

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the original decree. Mears v. Mears, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetternack and applied in Kern are applicable here as well:

> A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been in the contemplation of the trial court when the original decree was entered.

Vetternack, 334 N.W.2d at 762.

After a review of the facts of this case, we are convinced the trial court was correct in its ruling. Teresa has not carried her burden of showing a material, permanent change of circumstances.

We acknowledge Melvin has had some problems. However, there is no showing these are insurmountable or permanent

in nature. Although Teresa has entered into an apparently stable marriage, there is no showing this is permanent either.

Additionally, Melvin was found to be more stable at the initial dissolution and custody determination. We hesitate to change custody to Teresa now she has gained this new-found stability. If her stability is dependent upon her marriage partner, as it appears it may be, it is not a stable base for custody of the children. She, and not the new husband, would be the custodial parent. We agree with the trial court this is too tenuous a change of circumstances to justify a modification of custody.

We affirm the trial court.

The parties are to pay their own attorney fees on appeal.

Costs of this appeal are taxed to Teresa.

AFFIRMED.