

IN THE COURT OF APPEALS OF IOWA

FILED

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JAN 30 1981

CLERK SUPREME COURT

RICHARD KENT TRUBER,

)

Petitioner-Appellant.

)

vs.

)

PAMELA SUE TRUBER,

)

Respondent-Appellee.

)

Filed January 30, 1981

0-420

3-65026

Appeal from Polk District Court - Rodney F. Ryan, Judge.

Petitioner appeals trial court's refusal to modify the child custody provision of the parties' dissolution decree. AFFIRMED.

David F. Chambers, Des Moines, Iowa, for petitioner-appellant.

Diane L. Dornburg, Des Moines, Iowa, for respondent-appellee.

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

PER CURIAM

Petitioner, former husband, appeals trial court's refusal to modify the child custody provision of the parties' dissolution decree. He claims that there has been a material and substantial change of circumstances justifying the transfer of custody to him. Our review is *de novo*. Iowa R. App. P. 4. We affirm.

The marriage of Richard and Pamela Truber was dissolved by decree filed on September 15, 1977. Custody of their two girls, born in 1967 and 1970, was awarded to Pamela. On December 6, 1979, Richard filed this application to modify so that custody would be transferred to him, alleging that he can provide a superior and more stable environment for the children than can Pamela. After hearing, the trial court ruled on March 6, 1980 that Richard had not shown the requisite changed circumstances and therefore denied his application. He appeals that ruling.

To justify modification of a custody decree, the petitioner must show by a preponderance of the evidence that conditions since the original decree have been materially and substantially changed such that the children's best interests require that custody be transferred to him or her. Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). Specifically, Richard must demonstrate that the changed circumstances were not within the trial court's contemplation at the time of the original decree, the change must be material and substantial, it must be more or less permanent or continuous, and it must relate to the welfare of the children. Id. at 139-40.

We do not think that Richard has sustained his burden of proof. His major complaints are that Pamela sold the marital home and used the proceeds to buy a car and for living expenses, moved into a one-bedroom upstairs apartment, has held five different jobs since the divorce, and leaves the children unattended for a brief time in the morning until they go to school. We agree with the trial court that these occurrences are not so material or substantial as to require change of custody. We affirm the trial court's order.

AFFIRMED.