

FILED

MAY 30 1980

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

IN RE THE MARRIAGE OF WILLIS ALFRED DASHER AND CARLA LITTLE DASHER

Upon the Petition of	)	
WILLIS ALFRED DASHER,	)	Filed May 30, 1980
Petitioner-Appellee,	)	
and Concerning	)	
CARLA LITTLE DASHER,	)	0-107
Respondent-Appellant.	)	2-63167

Appeal from Des Moines District Court - Thomas E. Tucker, Judge.

Respondent-mother appeals from an order modifying the child custody provisions of the parties' dissolution decree by transferring custody of the children to the petitioner-father. AFFIRMED.

David A. Hirsch of Edward W. Dailey Law Offices, P.C., Burlington, Iowa, for respondent-appellant.

Robert A. Engberg of Pryor, Riley, Jones & Aspelmeier, Burlington, Iowa, for petitioner-appellee.

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

Respondent, Carla Dasher, appeals from an order modifying the child custody provisions of the prior dissolution decree terminating her marriage to petitioner, Willis Dasher. On appeal, Carla asserts that Willis failed to show substantial and material changes in circumstances sufficient to justify the trial court's order changing child custody. We disagree and affirm the trial court.

Modification of a dissolution decree is allowed only when there has been a material and substantial change in circumstances since the date of the original decree. In re Marriage of Brown, 247 N.W.2d 2, 4 (Iowa 1976); Dworak v. Dworak, 195 N.W.2d 740, 742 (Iowa 1972). The applicant has the burden of showing by a preponderance of the evidence substantial and material changes in circumstances which make the modification expedient. It must appear that the new custodial arrangement will better serve the well-being of the children. Davis v. Davis, 237 N.W.2d 455, 457 (Iowa 1976). The change of circumstances relied upon must relate to the welfare of the children. In re Marriage of Brown, 247 N.W.2d at 4.

In applying these principles *de novo* to the record before us, we conclude that Willis has sustained his burden supporting a change of custody. The root of the problem here, as in In re Marriage of Dawkins, 285 N.W.2d 8 (Iowa 1979), and In re Marriage of McCreary, 276 N.W.2d 399 (Iowa 1979), is the mode of living chosen by the custodial parent. Since the time of the dissolution decree, Carla has had a series of affairs with several men. Such affairs have included frequent sexual relations in her home with the children present. Even accepting her claim that the children were sleeping at the time of these encounters, we believe such conduct reflects an evident lack of parental responsibility on her part. In addition, the record reflects too many instances of Carla's absence from the home, leaving the children unattended. In contrast, Willis's life has stabilized since the time of the decree. His employment appears to be stable and he has remarried. He appears able and willing to offer the children the structured, wholesome and loving environment which they need and deserve.

Based upon these considerations, we believe that the children's best interests will be served by the change of custody ordered by the trial court.

AFFIRMED.

Danielson and Snell, J.E., concur; Oxberger, C.J., and Johnson, J., dissent.

If this were an original custodial determination, I would concur in trial court's award of custody to petitioner. I do not believe, however, he has met the heavy burden the law places on him as the noncustodial parent to show a permanent, material and substantial change of circumstances warranting disturbance of the original custodial arrangement. Unlike the situation in McCreary, respondent's pattern of living has not exposed the children to any tangible serious risk of harm. While the nature of her relationships with various male companions cannot be condoned, there is no showing the type of people with whom she associates are undesirable influences on these minor children. Further, unlike the Dawkins case, respondent has not refused to assume her parental responsibilities. While respondent should carefully assess her situation to assure she is not placing too much responsibility on the children, particularly the older child, this does not amount to an abandonment of her parental responsibilities. The children here appear to be healthy and well-adjusted. This credit primarily goes to respondent.

I would reverse trial court's order modifying the custodial provisions of the original decree.

Oxberger, C.J., joins in this dissent.