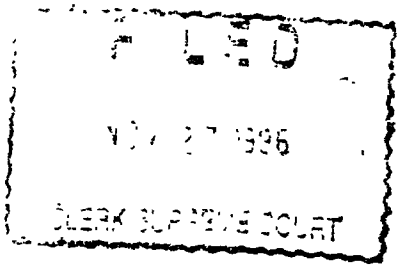
IN THE COURT OF APPEALS OF IOWA

No. 6-580 / 95-1034

IN RE THE MARRIAGE OF WILLIAM RUSSELL AND JULIE RUSSELL



Upon the Petition of
WILLIAM RUSSELL,

Petitioner-Appellant,

And Concerning
JULIE RUSSELL,

Respondent-Appellee.

Appeal from the Iowa District Court for Bremer County, Gilbert K. Bovard, Judge.

William Russell appeals from the district court's refusal to modify the dissolution decree to grant him primary physical care of the parties' children. **AFFIRMED.**

William S. Smith, Waterloo, until withdrawal, and then Jeffrey C. Peterzalek of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant.

Patrick G. Vickers of Vickers Law Office, Greene, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a father claiming the district court should have modified the parties' dissolution decree to award him custody of their children. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

William and Julie Russell are the parents of Matthew, born in 1990, and Monica, born in 1992. Julie had two children from an earlier marriage, and these children, Timothy, born in 1985, and Michael, born in 1987, were adopted by William during the parties' marriage. A dissolution decree was entered for the parties on November 17, 1993, which incorporated the parties' stipulation. Under the decree, Julie was granted primary physical care of the four children. William was awarded extensive visitation.

On June 21, 1994, William filed an application for modification, claiming the physical care of the children should be transferred to him. Julie was planning to move to Texas with her boyfriend. William also stated that while Julie was working as an over-the-road truck driver, she would leave Matthew and Monica in his care for long periods of time. He also pointed out that Julie had two misdemeanor convictions for writing bad checks. The district court entered an order on April 20, 1995, denying the application for modification. William now appeals.

William contends the district court should have awarded him custody of all four children. In the alternative, he asks for custody of only Matthew and Monica. A party seeking modification of custody has the burden to show a substantial change

in circumstances. *In re Marriage of Weidner*, 338 N.W.2d 351, 361 (Iowa 1983). A parent must also prove an ability to minister more effectively to the children's well being. *In re Marriage of Howe*, 471 N.W.2d 902, 903 (Iowa App. 1991).

We agree with the district court's conclusion that William failed to show a substantial change in circumstances, or that he could minister more effectively to the children's well-being. The evidence showed Julie had been working as an over-the-road truck driver at the time of the dissolution decree and had been leaving Matthew and Monica in William's care while she was out of town. Thus, there had been little change in the amount of time William was caring for the children. Julie gave a legitimate reason for moving to Texas -- better job prospects. We conclude William would be a more than adequate caretaker for the children, but at this point we determine he has not met the heavy burden necessary to modify custody.

Julie asks for attorney fees for this appeal. We determine William should pay $500 for Julie's appellate attorney fees.

We note that while this case was pending on appeal, the supreme court granted William's motion for a limited remand to allow the district court to hear an application for temporary custody of the children. By the supreme court's order, the present appeal was to proceed in a normal manner. Our opinion in this case addresses only William's appeal of the April 20, 1995 modification ruling and the May 19, 1995 ruling on the motion pursuant to Iowa Rule of Civil Procedure 179(b). We do not address the matters considered in the limited remand to the district court.

We affirm the decision of the district court. Costs of this appeal are assessed to William.

AFFIRMED.