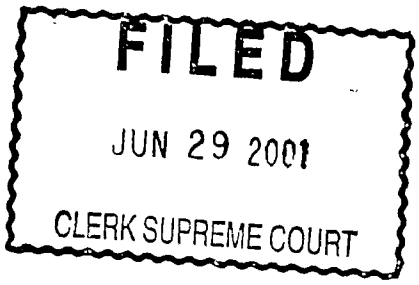
IN THE COURT OF APPEALS OF IOWA

No. 1-334 / 00-0452
Filed June 29, 2001



JENNA LONGNECKER,
Petitioner-Appellee,

vs.

ALFONSO EDUVIJEN RAYMUNDO,
Respondent-Appellee.

Appeal from the Iowa District Court for Story County, Carl D. Baker, Judge.

The respondent appeals the district court's ruling on petitioner's action for child custody, support, and visitation. **AFFIRMED.**

Kolleen K. Samek, Des Moines, for appellant.

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., Des Moines, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

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MAHAN, P.J.

Respondent Alfonso Eduvijen Raymundo appeals the district court's ruling on petitioner Jenna Longnecker's action for child custody, support, and visitation. Respondent argues the district court erred in: (1) refusing to adopt the visitation schedule to which the parties agreed; and (2) failing to provide more extensive visitation. Both parties request an award of appellate attorney fees. We affirm and award Jenna $500 in appellate attorney fees.

Background Facts and Proceedings. Jenna and Alfonso are the unmarried parents of Hannah, born November 26, 1996. In July of 1998, Jenna filed a petition seeking child custody and child support. Trial was held on January 28, 2000. The parties stipulated to joint legal custody with primary physical care awarded to Jenna. The parties also stipulated to several other issues not part of this appeal. The main issues in dispute at the trial were visitation and the division of transportation expenses.[1] Following trial, the district court entered the visitation portion of the decree[2] as follows:

> 7. Visitation.
>
> A. Summer Visitation. For the summer months of June, July and August in 2000, and each year thereafter, Alfonso shall be entitled to a twenty-one (21)-day summer visitation. This visitation will take place after the termination of the school year in May or June and conclude at least one (1) week prior to the commencement of the following school year.

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[1] The transportation expenses issue was not appealed.

[2] Jenna and Hannah reside in Iowa. Alfonso resides in California.

B. Christmas Visitation. After reviewing the position of each party with respect to Christmas visitation, the Court has concluded that it should take the following form:

Commencing in the year 2000, Alfonso shall be entitled to visitation over the Christmas holiday from December 26 until January 4 of the following year, unless Hannah's school year begins prior to January 4, in which case she will be returned to Iowa the day before school commences. This Christmas visitation shall then be exercised each year thereafter.

C. Spring Break Visitation. In even-numbered years until Hannah begins regular school attendance in kindergarten, Alfonso shall be entitled to visitation from Palm Sunday through Easter Sunday. Hannah shall be returned to Iowa no later than the day after the Easter holiday.

After Hannah begins regular school attendance in kindergarten and in even-numbered years, Alfonso shall be entitled to visitation with Hannah in California during the same time that Hannah is on spring break from her school in Iowa. Hannah shall be returned to Iowa the day before school reconvenes.

Alfonso appeals only on the issue of visitation. Both parties request appellate attorney fees.

Standard of Review. We review de novo. Iowa R. App. P. 4. We review the entire record and adjudicate rights anew on issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). While we give weight to the factual findings of the district court, especially with respect to credibility determination, they do not bind us. *Knickerbocker*, 601 N.W.2d 48, 51 (Iowa 1999). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Visitation Rights. Alfonso argues the district court erred in (1) refusing to adopt the visitation schedule to which the parties agreed; and (2) failing to provide more extensive visitation. We disagree.

A careful review of the record supports the district court finding the parties disagreed about the details of visitation. The district court clearly did not err in failing to adopt the schedule agreed to by the parties because such an agreement did not exist.[3]

In addition, the district court did not err in failing to provide more extensive visitation. The visitation provided to Alfonso by the district court can be summarized as follows:

> 1. **Summer Visitation:** *every year* for twenty-one (21) days to be exercised during the months of June, July, and/or August;
>
> 2. **Christmas Visitation:** *every year* from December 26 through January 4 (or the day before classes resume, whichever occurs first);
>
> 3. **Spring Break:** *even-numbered years* from Palm Sunday through Easter Sunday (after Hannah begins school, during her school's scheduled Spring Break).

The district court must be guided by the best interests of the child. *In re Marriage of Drury*, 475 N.W.2d 668, 670 (Iowa Ct. App. 1991). Hannah was three years of age at the time of trial. The distance between Iowa and California is great. There was evidence in the record Alfonso had not always fully exercised his visitation rights. The visitation as provided by the district court

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[3] Even assuming arguendo the parties reached some minor agreement as to visitation, the district court still has the final say as to the approval of any such agreement. *In re Marriage of Handeland*, 564 N.W.2d 445, 446 (Iowa Ct. App. 1997).

safeguards the best interests of the child. More extensive visitation is not warranted.

Appellate Attorney Fees. Jenna and Alfonso request attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). A successful party does not have a vested right to appellate attorney fees. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Wood*, 567 N.W.2d at 684; *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We order Alfonso to contribute $500 toward Jenna's appellate attorney fees. We deny Alfonso's request for attorney fees.

AFFIRMED.