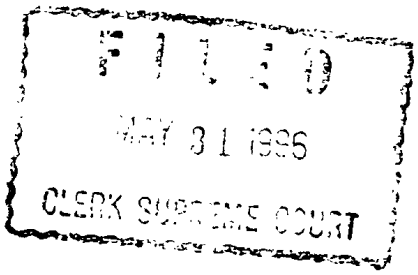
IN THE COURT OF APPEALS OF IOWA

No. 5-656/94-1839



IN RE THE MARRIAGE OF DANIEL P. BREKKE AND ELAINE BREKKE

Upon the Petition of
DANIEL P. BREKKE,

Appellant,

And Concerning
ELAINE BREKKE,

Appellee.

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

Daniel Brekke appeals the assessment of costs and attorney fees in the district court decision denying Elaine Brekke's petition to modify the parties' dissolution decree. **AFFIRMED.**

Harry L. Haywood, III, Eldora, for appellant.

Mark W. Lindholm of the Allbee Law Firm, Marshalltown, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

PER CURIAM

This is an appeal by a husband challenging the assessment of costs and attorney fees in the district court decision denying the wife's request for modification of the parties' dissolution decree We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

A dissolution decree was entered for Daniel and Elaine Brekke on June 14, 1993 Daniel was awarded primary physical care of the parties' four children. Elaine was granted reasonable visitation rights Later events, however, showed the parties were not able to cooperate concerning visitation.

On May 25, 1994, Elaine filed an application to modify the decree, seeking to be granted physical care of the children. The district court denied the request to modify the dissolution decree. The court did set forth a more specific visitation schedule, and informed the parties they would be required to abide by the schedule. The court increased Elaine's child support obligation. Daniel was ordered to pay $400 for Elaine's attorney fees. The court assessed costs one-half to each party.

I. Daniel now appeals. He claims the district court abused its discretion in awarding attorney fees to Elaine when she did not prevail in the modification action. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. *Id.*

We find no abuse of discretion in the present case. Although Elaine did not prevail in her quest to be awarded physical care of the children, the court did award her a greater amount of visitation and did set forth a specific visitation schedule. The modification order also clearly informed Daniel he could no longer deny visitation based on prior plans he made with the children. We consider Elaine the prevailing party on the issue of visitation.

II. Daniel claims the court abused its discretion in requiring him to pay one-half of the court costs. Based on our finding that Elaine prevailed on the issue of visitation, we find no abuse of discretion in the assessment of costs.

III. Daniel claims the district court should have required Elaine to pay his attorney fees because he was the prevailing party on the custody issue. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *Id.* Based on the relative financial positions of the parties, we find no abuse of discretion in the court's failure to award attorney fees to Daniel.

Daniel seeks attorney fees for this appeal. Again, based on the relative financial positions of the parties, we deny his request. We affirm the decision of the district court. Costs of this appeal are assessed to Daniel.

AFFIRMED.