FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

199

IN RE THE MARRIAGE OF THOMAS H. TREINEN AND KATHLEEN A. TREINEN

Upon the Petition of	)	
THOMAS H. TREINEN,	)	Filed May 30, 1980
Petitioner-Appellant,	)	
And Concerning	)	
KATHLEEN A. TREINEN, now known as Kathleen Ann Wallace,	)	0-58 / 3-63506
Respondent-Appellee.	)	

Appeal from Cherokee District Court - James P. Kelley, Judge.

Father appeals from trial court's rulings on motions in his action to modify child custody and visitation provisions of dissolution decree alleging trial court erred in 1) denying him the right to present evidence and make a record on issue of mother's visitation, 2) granting a protective order to mother prohibiting him from taking discovery depositions, and 3) denying him due process of law due to these actions. REVERSED.

Daryl L. Hecht and Stewart A. Huff of Crary, Huff, Yates & Clem, P.C., Sioux City, Iowa, for petitioner-appellant.

William J. Lane of Legal Services Corporation of Iowa, Sioux City, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Carter and Johnson, JJ. Snell, J., takes no part.

Petitioner-father, Thomas H. Treinen, appeals from trial court's ruling on motions and order filed in his action to modify the child custody and visitation provisions of a dissolution decree. He alleges trial court erred in 1) denying him the right to present evidence and make a record on the issue of respondent-mother's visitation, and 2) granting a protective order to respondent prohibiting him from taking discovery depositions. Petitioner further argues he was denied due process of law due to these actions. We reverse.

I. Background. On July 7, 1977, trial court dissolved the parties' marriage and granted custody of their three minor sons to respondent. These custody provisions were affirmed by this court in an opinion filed April 28, 1978. Petitioner filed an application for modification of the custody and visitation provisions of the decree on July 17, 1978. Respondent answered on August 7, 1978, requesting the petition be dismissed. On August 10, 1978, the parties stipulated petitioner would assume care and custody of the children during pendency of the instant action.

Subsequently, petitioner sought to take oral depositions of respondent and her new husband, James Wallace. Respondent countered, on November 28, 1978, by filing motions for protective order, interim visitation schedule, and change of venue. Petitioner resisted and, on February 12, 1979, renewed his motions to take depositions on oral examination. On February 21 and 22, 1979, respectively, respondent and James Wallace filed motions for protective order to prevent petitioner from taking their oral depositions.

On April 3, 1979, respondent filed an amended answer requesting temporary and permanent custody of the children be awarded to petitioner in exchange for reasonable rights of visitation. A hearing was held on the various pending motions on April 18, 1979. At that hearing, respondent requested trial court rule on the motions before it and also resolve questions as to the hours of visitation. Petitioner joined in the request for a ruling on the motions, but argued a substantial issue as to visitation still remained and objected to resolution or dismissal of the main action. Finding petitioner's contentions were motivated by considerations other than the best interests of the minor children, trial court ruled on respondent's motions and request for determination of visitation privileges. Petitioner appeals from trial court's ruling sustaining respondent's motion for a protective order and adjudicating of respondent's permanent visitation rights.

II. Scope of Review. Discovery procedures are designed in large part not only to allow adversaries to gain knowledge in preparation of trial, but also to aid in development of proof. Allen v. Lindeman, 259 Iowa 1384, 1395, 148 N.W.2d 610, 617 (1967). Rules relative to discovery are to be liberally construed. Jones v. Iowa State Highway Commission, 157 N.W.2d 86, 87 (Iowa 1968). "[T]rial courts are vested with discretion measurably to control, limit and even prevent discovery in any form where, for good cause shown or evident, it will not in the opinion of the court promote the administration of justice in a particular case." We will review trial court's exercise of discretion to assure no abuse exists. See Sandler v. Sandler, 165 N.W.2d 799, 801 (Iowa 1969).

III. Discussion. Petitioner complains trial court's granting a protective order to respondent and ruling on the issue of visitation denied him due process of law because he was not allowed to make a record. Respondent, on the other hand, asserts petitioner only pursued the depositions as a means to embarass, humiliate, and further harass her.

It is a well-settled policy of law, every party to an action shall have his or her day in court to try his or her cause of action on its merit. In re Marriage of Short, 263 N.W.2d 720, 723 (Iowa 1978). Moreover, there is a prima facie right in every case to take discovery depositions in preparation of this day in court. Cook v. Cook, 259 Iowa 825, 836, 146 N.W.2d 273, 279 (Iowa 1966). It is a right which should not be lightly overridden as the taking will not ordinarily be prevented unless there is a clear showing such relief is essential. Id.

Applying these standards, we must reverse trial court's order and remand this matter to allow petitioner to make his record and have his day in court. Although respondent may be correct in her allegations regarding petitioner's motives, petitioner nonetheless raised serious issues regarding the quality of environment to which the children will be exposed while visiting respondent. This mandates a record be made. Once that is done, it will be possible to complete an accurate assessment of the party's contentions and resolve the issue of visitation according to the best interests of the children. Given these matters of serious concern, trial court should have utilized the authority of Iowa R. Civ. P. 123 to protect respondent's interests short of outright denial of discovery.

Due to the foregoing considerations, we find it unnecessary to address petitioner's argument he was denied due process of law.

Judgment of trial court is reversed and this case accordingly is remanded for production of a record on the issue of visitation. Each party shall pay his or her own legal fees. The costs of this appeal shall be divided equally between the parties.

REVERSED AND REMANDED.