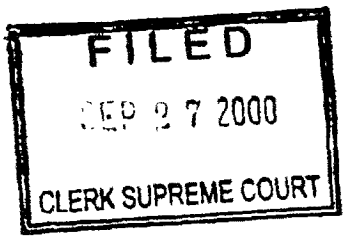
IN THE COURT OF APPEALS OF IOWA

No. 0-428 / 99-1690
Filed September 27, 2000

IN RE THE MARRIAGE OF YVONNE A. METCALF AND LOUIS E. METCALF

Upon the Petition of
YVONNE A. METCALF,
Petitioner-Appellant,

And Concerning
LOUIS E. METCALF,
Respondent-Appellee.



Appeal from the Iowa District Court for Lee (North) County, R. David Fahey, Judge.

Yvonne Metcalf appeals from the trial court's order denying her request for modification of visitation. **AFFIRMED.**

J. Bryan Schulte of Bauer, Schulte, Hahn, Swanson & Brown, Burlington, for appellant.

Thomas T. Skewes of Johnson & Skewes, Fort Madison, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

MILLER, J.

Yvonne Metcalf appeals the denial of her petition for an order modifying the visitation terms accorded Louis Metcalf in a previous modification of the parties' 1991 dissolution decree, contending the trial court erred in not finding a substantial change in circumstances existed to order Louis's visitation be supervised. Our review is de novo. Iowa R. App. 4; *In re Marriage of Wersinger*, 577 N.W.2d 866, 868 (Iowa App. 1998). We affirm.

The background facts are as follows. The parties' marriage was dissolved by a consent decree in April 1991, when the parties' three children were four, two and one year of age. The parties were awarded joint custody of the children, Yvonne was awarded physical care, and Louis was awarded "fair and reasonable visitation rights." In November 1996, Louis filed a motion for contempt, alleging Yvonne had denied him regular visitation several times and continually interfered with his visitation rights. He filed an application for modification of the same date, requesting the decree be modified to establish a visitation schedule. Yvonne filed a cross-application for modification, asking the court to order supervised visitation. She alleged the children told her Louis exposed the children to marijuana use by Louis and his wife. After hearing, the court found Yvonne in contempt and sentenced her to a seventy-two hour jail term. In late 1997 the court also entered an agreed-to order that set out a definite visitation schedule and ordered that "neither party nor their spouses shall use marijuana or other drugs in front of the children or while the children are under their care and control, nor shall the parties display drug paraphernalia to their children." A

modification the following year modified Louis's child support obligation and further modified the visitation schedule.

Yvonne filed this modification action in late 1998. She requested Louis's visitation be supervised and that the children not be removed from the State of Iowa. At trial she requested his visitation be restricted to his mother's home in Fort Madison, Iowa, though he lives ninety miles south in Hannibal, Missouri. She requested his mother supervise the nighttime portions of visitation. However, there was no evidence his mother had agreed to this arrangement. The factual basis for the modification included allegations of marijuana usage in the presence of the children and a charge of felony possession of marijuana against Louis.

At trial Yvonne's evidence of events which had occurred since the last modification of visitation showed only that: 1) in the early fall of 1998 Louis's wife smoked marijuana in his and the children's presence; and 2) Louis pled guilty to a felony possession of marijuana charge in Missouri. Yvonne made no claim or showing Louis's conviction arose from events that involved the children or occurred while the children were present. The trial court denied the petition, finding the requested modification would substantially interfere with Louis's right to visitation. The court enjoined Louis from using or possessing any illegal drug or drug paraphernalia in the children's presence, from permitting the children to be in the presence of illegal drugs or drug paraphernalia, and from permitting his wife or other persons to use or possess illegal drugs or drug paraphernalia in the presence of the children. On our de novo review, we agree with the trial court and affirm.

Our focus is on the children's best interests. Iowa Code § 598.41(1)(a) (1999); *Nicolou v. Clements*, 516 N.W.2d 905, 906 (Iowa App. 1994). While "[t]he burden to change a visitation provision in a decree is substantially less than to modify custody," *Wersinger*, 577 N.W.2d at 868, "we will not restrict a parent's visitation unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact." *In re Marriage of Rykhoek*, 525 N.W.2d 1, 4 (Iowa App. 1994). Yvonne presented no substantial evidence any direct physical harm will befall the children if supervised visitation is not ordered. We do not find from the record significant emotional harm to the children, who are now thirteen, twelve and eleven years of age, is likely to result if supervised visitation is not ordered. While we strongly condemn Louis's involvement with marijuana and his wife's apparent use of marijuana, we do not find the facts rise to a level warranting the significant restrictions on visitation proposed by Yvonne.

AFFIRMED.