IN THE COURT OF APPEALS OF IOWA

No. 1999-181 (9-405) / 98-1211
Filed December 13, 1999

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF KRISTIN McCUEN
AND CHAD McCUEN
Upon the Petition of
KRISTIN McCUEN,
Petitioner-Appellee,
And Concerning
CHAD McCUEN,
Respondent-Appellant/Cross-Appellee,
PATRICIA BRODERSEN,
Intervenor-Appellee/Cross-Appellant.

IN THE GUARDIANSHIP OF EMMALIN MARY WELLS,
CHAD McCUEN,
Appellant/Cross-Appellee,
vs.
JOHN WELLS,
Appellee,
PATRICIA BRODERSEN, Maternal Grandmother,
Intervenor-Appellee/Cross Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF
KAITLIN ANN McCUEN,
CHAD McCUEN, Father,
Appellant/Cross-Appellee,
PATRICIA BRODERSEN, Maternal grandmother,
Intervenor-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

In this consolidated action, Chad McCuen appeals a district court order appointing intervenor Patricia Brodersen guardian of his minor daughter Kaitlin and denying, with limited exception, his petition for modification of the original dissolution decree which awarded intervenor's daughter, Kristin McCuen (Wells),

physical care of the child. AFFIRMED AS MODIFIED; REMANDED WITH DIRECTIONS.

Steven H. Shindler of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney & Shindler, P.C., Des Moines, for appellant.

Jeffrey M. Lipman of Lipman Law Firm, P.C., Clive, guardian ad litem for appellee, Kristin McCuen.

Harvey L. Harrison and Catherine C. Dietz-Kilen of Harrison & Dietz-Kilen, Des Moines, for appellee, Patricia Brodersen.

Considered by Streit, P.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

In this consolidated action, the parties appeal from orders entered by the district court in an application to modify a decree of dissolution and two separate guardianships. The appeal concerns the custody and primary care of two children Kaitlin Ann McCuen (Kaitlin) and Emmalin Mary Wells (Emmalin). The children share Kristin McCuen Wells (Kristin) as their mother. Kaitlin's father is Chad McCuen (Chad). Emmalin's father is John Wells (John). Chad appeals the custody and guardian ad litem fee provisions of the court's combined decree. Patricia A Brodersen, the maternal grandmother of Kaitlin and Emmalin, has appealed from the visitation and guardian ad litem fee provisions. We affirm with modification.

I. Background Facts and Proceedings. Kristin married Chad McCuen in February 1990. Their daughter, Kaitlin, was born in October 1990. Kristin and Chad divorced in February 1992. Pursuant to agreement of the parties, Kristin was awarded primary physical care of Kaitlin. Chad was granted liberal visitation and ordered to pay child support. Both parties continued to reside in the Des Moines metropolitan area after their marriage was dissolved.

Kristin gave birth to her second child, Emmalin, in June 1992. Kristin and Emmalin's father, John Wells, married in May 1994. They separated one year later but had not divorced as of the time of trial in this case. Approximately six months after their separation, John moved to Sioux City where he continues to reside. While living with Kristin, John took an active roll in parenting both Kaitlin and Emmalin. Once he moved to Sioux City, however, his contact with Kristin and the girls

decreased. John has a significant history of alcohol abuse. He has been sober for over two years and now works as a substance abuse counselor.

In March 1995, Kristin filed an application to modify Chad's visitation with Kaitlin, alleging Chad had engaged in sporadic visits since the parties' marriage ended. In April 1995, the modification was granted, with Chad's consent, reducing his visitation to every other Saturday from 9:00 a.m. to 6:00 p.m. Chad exercised little visitation with Kaitlin from the date the modification decree was entered until June 1997. However, he contends both Kristin and her mother, Patricia Broderson, interfered with his ability to exercise visitation during that period of time.

Both during and after Kristin's marriages, Patricia and her husband, Charles, had frequent contact with Kaitlin and Emmalin, often due to Kristin's difficulties. Kristin, born in September 1970, has had significant psychiatric problems from an early age. Her social history has included use of illegal drugs, erratic attempts at employment, work as a stripper, and financial irresponsibility. At trial, she was described as manipulative and dishonest. She has moved frequently in her adult life. Despite her erratic lifestyle, Kristin does have a strong bond with her children.

In 1996, Kristin's life began a steep downward spiral fueled by substance abuse and continuing mental health problems. As a result, Patricia and Charles began providing care to Kaitlin and Emmalin on a regular basis, when Kristin was either incapable or unwilling to do so. By November of 1996, four-year-old Emmalin and six-year-old Kaitlin had moved into the Brodersen residence. From that time on, the Brodersens have provided the primary care to both girls.

Kristin's downward spiral continued. In early June 1997, she was charged with several felonies and arrested. On June 17, 1997, Patricia filed separate applications seeking to become guardian of Kaitlin and Emmalin. The district court appointed Patricia the temporary guardian for both girls.

On June 23, 1997, Chad filed applications to modify the dissolution decree and for a writ of habeas corpus, seeking custody of Kaitlin. A writ issued but was later annulled when the district court noted Patricia had previously been appointed temporary guardian of Kaitlin after Kristin's arrest. Patricia intervened in Chad's modification action and he made application to intervene in Patricia's application for guardianship of Kaitlin. The district court ordered the two guardianships and the modification consolidated for trial. A guardian ad litem was appointed to represent Kristin, who had subsequently been convicted and sentenced to prison. Trial to the court commenced April 29, 1998.

Following trial, the district court entered a decree appointing Patricia the permanent guardian of Kaitlin and Emmalin. It awarded Chad liberal visitation with Kaitlin and ordered him to pay child support. John Wells was given liberal visitation with Emmalin and also required to pay child support. The court granted Patricia the tax exemptions for both children. The court's decree also required Patricia, Chad, and John to pay equal shares of Kristin's guardian ad litem fees. Chad has appealed and Patricia has cross-appealed. John does not appeal, having acquiesced at trial to Patricia's guardianship of Emmalin.

Chad contends the district court erred in failing to award him primary physical care of Kaitlin due to a substantial change in circumstances. He also argues the district court abused its discretion in adopting verbatim Patricia's proposed decree as its own. Finally, he urges the district court abused its discretion by ordering him to pay a portion of the guardian ad litem fees.

Patricia disputes Chad's liberal visitation schedule and the guardian ad litem fee provision. In response, Kristin asserts the district court did not abuse its discretion in ordering the parties to share her guardian ad litem fees, since her position prevailed at trial.

II. Scope of Review. While the initial appointment of a guardian is tried at law, Iowa Code § 633.33 (1997), modifications of custody are tried in equity and our review is de novo. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa App 1998). This case involves both types of actions.

Case law conflicts as to the scope of review in guardianships. It appears that the confusion stems from a different standard of review for proceedings to *appoint* a guardian (on error) and to *terminate* a guardianship (de novo). *See In re Guardianship and Conservatorship of D.D.H.*, 538 N.W.2d 881, 883 (Iowa App. 1995). In *D.D.H.*, this court overruled *In re Rohde*, 503 N.W.2d 881 (Iowa App.1993), which had applied a de novo standard of review to a proceeding initiating a guardianship. We have since reviewed the appointment of guardians for errors, *In re Guardianship of Hensley*, 582 N.W.2d 189, 190 (Iowa App. 1998), and under a de novo standard. *Northland v. McNamara*, 581 N.W.2d 210, 212 (Iowa App. 1998)

The Iowa Supreme Court has also considered de novo the initial appointment of a guardian. *In re Guardianship of Knell*, 537 N.W.2d 778, 780 (Iowa 1995). *D.D.H.* was not cited or discussed in *Knell*, nor was the scope of review even at issue.

However, equity necessarily tempers our review in cases such as this one Where a case turns on the best interests of a child, and may involve overturning of presumptive parental rights, it is difficult to separate issues of law and fact. *See In re Guardianship and Conservatorship of Reed*, 468 N.W.2d 819, 826 (Iowa 1991) (citations omitted). In *Reed*, the Iowa Supreme Court recognized the fact that the determination of these types of issues enters the field of equity and principles of equity must be applied. *Id.* We conduct a de novo review.

III. The Merits. Chad argues the district court erred by awarding primary physical care of Kaitlin to Patricia. He contends custody should have been given to him because there had been a substantial change in circumstances. He also claims he was not afforded the presumptive preference normally given to a natural parent in custody disputes. Alternatively, he urges Patricia failed to produce sufficient evidence to rebut the parental presumption. Chad next argues that the trial court abdicated its responsibilities when it adopted verbatim Patricia's proposed decree Finally, he disputes the district court's order that Chad, John, and Patricia share equally in the guardian ad litem fees incurred on behalf of Kristin.

Patricia places error first with the trial court's visitation schedule for Chad, claiming it essentially deprives her of any weekends with Kaitlin. She also appeals that portion of the order requiring her to share in Kristin's guardian ad litem fees

We affirm on the issue of Kaitlin's primary physical care, modify Chad's visitation, and affirm on the issue of Kristin's guardian ad litem fees.

A. Primary Physical Care of Kaitlin.

1. Standards for Modification of Custody. Modification of the custodial terms of a dissolution decree should occur only when there has been a substantial change in circumstances since the time the decree was entered. *Walton*, 577 N.W 2d at 870. The party seeking to alter custody bears the significant burden of showing that the best interests of the child or children require the change. *Id.* In determining what is in the best interests of the child we can look to a parent's past performance because it may be indicative of the quality of the future care that parent is capable of providing. *In re Marriage of Winnike*, 497 N.W.2d 170, 174 (Iowa App. 1992).

We agree with Chad that there has been a substantial change in circumstances justifying a change of Kaitlin's primary physical caregiver. If we were deciding custody of Kaitlin solely between Chad and Kristin, we would name Chad primary caretaker, even if Kristin were not incarcerated. However, we are also asked to decide between Chad and Patricia, so we turn to and balance the issues and the law involved in Patricia's petition for guardianship of Kaitlin.

2. Guardianship. Patricia bore the burden to prove that it is in the best interests of Kaitlin to live with her despite the presumption favoring custody by a natural parent. *See* Iowa Code § 633.559 (1997); *In re Guardianship of Stewart*, 369 N.W.2d 820, 823 (Iowa 1985). This parental presumption is not absolute and gives way in two circumstances, where it has been relinquished or where the best interests

of the child call for other custody. *Knell*, 537 N.W.2d at 781 (citations omitted). Our de novo review convinces us the parental presumption favoring Chad has been overcome. We conclude it is in Kaitlin's best interest to continue living with the Brodersens and Emmalin.

Natural parents who take "'an extended holiday from the responsibilities of parenthood'" may not be afforded the presumption against a non-parent. *Id.* at 782. However, a parent does not lose the preference by seeking help in caring for the children in a time of need. *E.g.*, *Rohde*, 503 N.W.2d 881(mentally retarded parent lived with sister); *Stewart*, 369 N.W 2d 820 (young, single father entered military and left child with relatives); *Hulbert v. Hines*, 178 N.W.2d 354 (Iowa 1970) (child lived with aunt and uncle while mother dealt with mental illness). Chad cites *Rohde* and *Hulbert* in support of his position. We find these cases inapplicable. In those cases, parents sought help with their children by temporarily placing them in others' homes but maintained contact with the children and provided financial and emotional support. This case presents a different scenario.

When the parties' marriage was dissolved in early 1992, Chad stipulated that Kristin should be named primary caretaker of Kaitlin. Evidence in the record raises serious questions about Kristin's suitability to serve as primary caretaker of a young child at that time. Nevertheless, Chad agreed to have her assume that role. Chad exercised little visitation with Kaitlin after his marriage ended. He also took no legal action to enforce his visitation rights when Kristin interfered. Our de novo review of the record supports the conclusion Chad had substantial grounds for a modification

of custody after the dissolution yet he took no action. Instead, he stipulated to even less visitation in 1995.

A parent's past performance may be indicative of the quality of the future care that parent is capable of providing. *Winnike*, 497 N.W.2d at 174. Both before and after Kristin was out of the picture, Chad failed to take advantage of unscheduled opportunities for visitation. For a brief time, Kaitlin was enrolled by Kristin in the McCuen family's day-care operation. Chad did visit Kaitlin at the day-care center before and after work. Yet when it came time to pay and Kristin did not do so, Chad did not come forward and pay for Kaitlin's day care so that he could continue seeing her. Since the girls have been with Patricia, Chad has failed to attend several school events of which he had knowledge.

We have no doubt that Kristin interfered with Chad's rights to visitation, yet Chad failed to act. She moved frequently, failed to inform him of moves, often did not have a telephone, and sometir es left home with Kaitlin, knowing that Chad was coming to pick her up. Interference with the other parent's visitation rights is clear grounds for modification of custody Other obvious grounds for a change of custody existed as well. Kristin has a long and jaded criminal, psychiatric and financial history. She had been arrested frequently for writing bad checks. Chad and his family knew about some of these prior arrests. However, Chad took no action to ensure the safety and well-being of his daughter until June 1997.

We find some of Chad's excuses for his failure to take action disingenuous. Chad explains that he stipulated to the 1995 modification because Kristin promised

him he would actually get more visitation if he did so. However, she had lied to and manipulated him during much of their relationship. Chad also claims Kristin was difficult to find because she moved so often. However, John Wells testified that after his separation from Kristin in 1995, he always managed to locate her and the girls. John's search was made all the more difficult from Sioux City; Chad lived in the Des Moines area during the time period in question.

We find little evidence that Patricia interfered with Chad's visitation, as Chad suggests. At worst, Patricia may have sinned by omission, rather than commission We find no active misrepresentation or 'hiding' of Kristin and Kaitlin by Patricia Chad testified that he called Patricia 'hundreds' of times during the 1992-1997 period, trying to locate Kristin. However, Patricia meticulously keeps a dayplanner, in which she logs the day's activities, from mundane acts such as phone calls and grocery lists, to personal feelings and concerns. She logged only one phone call from a McCuen, Chad's father, who called in Ju[illegible] of 1997 after Kristin's last arrest to confirm the whereabouts of Kaitlin and Emmalin. Patricia's husband also testified that he received no calls from the McCuens during the relevant time period. Even Chad's testimony does not bear out his assertions. He testified that when he reached Patricia on these multiple occasions and asked for Kristin's number or address, she would tell him she did not want to get involved in her daughter's disputes but she would relay a message for him. We find nothing sinister in such a remark, if he did in fact contact her. Finally, during the year between Kristin's arrest and the trial of this

matter, Patricia was extremely accessible to Chad. Patricia facilitated Chad's visitation, behaved in an exemplary manner, and often agreed to additional visitation.

Despite our skepticism of Chad's past difficulties with Patricia and our concern regarding his failure to take legal action sooner, we cannot rest our decision on Chad's past behavior alone. He has now taken legal action and exercised visitation regularly in the year before trial. Evidence of a parent's past immaturity does not overcome the presumption favoring parental custody when these indiscretions are not present risks. *Northland*, 581 N.W.2d at 213 (reversing custody award to stepfather over natural father because it was based on natural father's past unstable job history; natural father had maintained same job for several years before trial). Therefore, Chad's past failures cannot be the sole basis for our decision.

Although we are encouraged by Chad's conduct in the year preceding trial, we find that Kaitlin's best interests demand placement with her grandmother. We acknowledge that the circumstances before us present a close question. However, where return of custody to the child's natural parent "is likely to have a seriously disrupting and disturbing effect upon the child's development, this fact must prevail." *Knell*, 537 N.W.2d at 782 (citations omitted). Our decision that Kaitlin's best interests require placement with Patricia is supported by the principle that

> if a person having lawful care of a child has properly provided for a child's social, moral and educational needs for a substantial period of time and the child has become attached to that environment and those responsible for his [or her] welfare and happiness, a court is not justified in transferring that custody to another except for the most cogent reasons.

In re Guardianship of Stodden, 569 N.W.2d 621, 625 (Iowa App. 1997) (citation omitted). Patricia and her husband have provided a loving, nurturing home for Kaitlin and Emmalin since 1996 and were often a normalizing influence before that time Before the girls came to live with the Brodersens, they often took Kaitlin and Emmalin on trips and cared for them in their home or in Kristin's. Patricia appears to be one of the few constants in these girls' lives.

We do not disregard the testimony of the court-appointed child custody investigator, Dr. Pottebaum, who favored placement with Chad as the natural father and opined that he was equally capable of being a good primary caregiver. However, based on the testimony of both Dr. Pottebaum and others, we find Kaitlin and her sister could be harmed by Kaitlin's removal from the custody of their grandmother and by separation from one another. These girls share a close bond. The record documents the severe chaos and instability in which Kaitlin and Emmalin have grown up. Many times Kristin would rent an apartment, write a bad check for the rent and be evicted the next month. Often she and the girls moved without even taking their belongings. Kristin had a tumultuous relationship with John, who abused alcohol during their marriage. Kristin herself abused drugs. Kaitlin and Emmalin lived with John and Kristin during their marriage and were witness to these difficulties. The record also indicated that the girls may have witnessed or at least heard of their mother's suicide attempt. Their mother is now in prison and they see her perhaps once a week. This upheaval and lack of permanency certainly affected the girls. Mindful of the past instability in these children's lives, we find it is not in either

child's best interest to tear them from one another and the stable arrangement that they now enjoy with their grandmother.

The fact that if Kaitlin lives with Patricia she will also get to live with her half-sister weighs heavily in our decision. John relinquished his custody interest in Emmalin in a desire to keep the girls together. Separation of siblings and half-siblings must promote the child's best interests. *See In re Marriage of Orte*, 389 N.W.2d 373 (Iowa 1986). Both Patricia's expert and Dr. Pottebaum testified that it would be traumatic for the girls to be separated. The girls have relied on one another and share a strong, close bond. For reasons already discussed, we determine that it is in Kaitlin's best interests not to be separated from Emmalin.

Chad argues Patricia is unfairly afforded the presumption that disfavors separation of siblings in custody disputes. However, the sibling preference is a consideration in determining what is in the child's best interest. *Orte*, 389 N.W 2d at 374. Chad's argument has been made before and, in response, the Iowa Supreme Court has stated that the child's welfare is the primary concern, despite the seeming unfairness in applying the presumption to a situation where half-siblings are involved. *Id.* In *Orte*, the mother had two children from a prior marriage and one with the current father. Both sought custody of the mutual child, but the court awarded custody to the mother. The Iowa Supreme Court found that although the parents' quality was in equipoise, custody was awarded to the mother because the mutual child and one of her sons were very close. We find a similar situation here. While we have

no doubt that Patricia provides a quality home and Chad is equally capable of doing so, the girls should not be separated at this time.

None of the circumstances that have justified sibling splits are present in this case. Previously, one parent's inability to control a child or a child's stronger bond with one parent who was its primary caretaker have justified sibling splits. *In re Marriage of Jones*, 309 N.W.2d 457 (Iowa 1981); *In re Marriage of Riddle*, 500 N.W.2d 718 (Iowa App. 1993). One parent's instability and impulsive behavior over a period of years also permit separation of half-siblings. *Yarolem v. Ledford*, 529 N.W.2d 297 (Iowa App. 1994). These circumstances do not exist here. Finding that the trial court did not misapply the law and that Kaitlin's best interests require placement with Patricia, we affirm the award of primary physical care of Kaitlin.

C. Trial Court Adoption of Patricia's Proposed Decree. Chad argues that the district court did not comply with procedures set forth in case law for adopting verbatim the winning side's proposed decree. He also asserts the final decree, authored by Patricia's attorney, contained findings that were unsupported by the record. In particular, he takes issue with the finding that Kristin and Patricia did not participate in denying Chad's visitation rights.

Our de novo review obviates Chad's argument. *See Kroblin v. R.D.R. Motels, Inc.*, 347 N.W.2d 430, 436 (Iowa 1984) (holding that party must show trial court's adoption of winning side's proposed ruling materially and substantially affected substantial rights). We have reviewed the record in its entirety and considered the issues anew. While we find the record supports a finding that Kristin interfered with

Chad's visitation, it does not support a finding that Patricia was complicit. Although the trial court's decree is obviously written by an advocate, the ultimate decision is supported. The trial court's action does not require reversal. *See Quality Refrigerated Services, Inc. v. City of Spencer*, 586 N.W.2d 202, 205 (Iowa 1998) (stating trial court may adopt verbatim one party's proposed findings and conclusions without jeopardizing its independent judgment).

D. Kristin's Guardian Ad Litem Fees. Both Chad and Patricia dispute the trial court's authority to require them to share equally with John in paying Kristin's guardian ad litem fees. Attorney fees cannot be taxed as costs without statutory authority. *Grant v. Laurie*, 533 N.W.2d 563 (Iowa 1995). However, we find authority for the award and affirm.

Iowa Rule of Civil Procedure 13 provides judgment cannot be entered against an incarcerated person without appointment of a guardian ad litem. The district court correctly appointed such a guardian for Kristin who was imprisoned at the time of trial. Kristin has filed a brief and argues that the fee award is supported by Iowa Code section 598.36, permitting the prevailing party in a modification proceeding to be awarded attorney fees. In general, costs are recoverable by a successful party against a losing party. *See* Iowa Code § 625.1.

In *Grant*, the Iowa Supreme Court dealt with the precise issue of whether fees incurred by an attorney appointed as guardian ad litem pursuant to Rule 13 can be taxed as costs. *Grant*, 533 N.W.2d at 564. *Grant* involved a wrongful death suit brought by the estate of a decedent killed in a car driven by the defendant. The

defendant had been convicted of involuntary manslaughter based on the same accident and imprisoned. The trial court appointed an attorney guardian ad litem for him and assessed the guardian's fees against the private litigants. The Iowa Supreme Court affirmed. The supreme court reasoned from Iowa Code sections 625.1, 625.5 and 625.14 and decided that the sacrifice of paying for the required representation should come not from the unwilling appointed lawyer, but from litigants who chose to bring suit against someone who is incarcerated.[1] Chad and Patricia instituted the proceedings after Kristin was incarcerated. John does not appeal. The fee award stands.

We do not find authority to assess fees against any other entity, e.g., the county. Fees cannot be taxed to a nonparty without statutory authority. *Stodden*, 569 N.W.2d at 625. Although not cited in *Grant*, the Iowa Supreme Court visited this issue in *Lalla v. Gilroy*, 369 N.W.2d 431 (Iowa 1985). *Lalla* involved a wrongful death suit brought by the estate of a murder victim against the murderer. In that case, the trial court had assessed the guardian's fees against the county in which the trial took place. The Iowa Supreme Court reversed, distinguishing the case from prior authority in which actions had been instituted by a public officer in the furtherance of a public duty and fees were appropriately assessed against the county. The case

[1]The Iowa Supreme Court has previously noted the dilemma inherent in the Rule 13 mandate and the inability to fund the required guardian fees. *Grant v. Iowa District Court*, 492 N.W.2d 683, 686 (Iowa 1992) (urging legislature to establish funding mechanism for representation of the imprisoned under Rule 13); *Garcia v. Wibholm*, 461 N.W.2d 166, 171 (Iowa 1990) (same).

before the court was a private wrongful death action, neither prosecuted nor defended by any public officer or entity. The Iowa Supreme Court feared a slippery slope of Rule 13 fees, noting that if the county were liable for payment of the guardian ad litem fee in the wrongful death situation, the same would be true for guardians ad litem appointed for minors and all the other classes of persons named in Rule 13. *Lalla*, 369 N.W.2d at 434.[2] Here, the Rule 13 fees were appropriately taxed to the other parties.

E. Chad's Visitation Schedule. Patricia also appeals the visitation schedule established for Kaitlin. She does not appeal the identical schedule established between Emmalin and John. Patricia contends that the schedule entered by the district court has the potential to deprive her and Emmalin of sharing any weekends with Kaitlin. We agree and modify.

The district court decree provided:

> Chad McCuen shall be entitled to visitation with Kaitlin McCuen on the following schedule:
>
> a. Alternating weekends from 4:00 p.m. on Friday until 4:00 p.m. on Sunday.
>
> b. If his work schedule permits, he shall have visitation with Kaitlin every other weekend from Saturday at 9:00 a.m. until Sunday at 4:00 p.m. This visitation is personal and depended [sic] upon Chad McCuen being personal available. If he is not available, for any reason, the additional visitation is waived. Chad shall provide 30 days advance

[2]Chapter 633 also does not provide authority for imposing the fees on the county. Iowa Code section 633.561 permits the court to assess the fees of an attorney appointed to represent the proposed ward, if indigent, in a guardianship proceeding against the county. However, Kristin was not the 'proposed ward' in this proceeding.

notification to Patricia Ann Broderson of his intent to exercise the additional visitation.

c. If his work schedule permits, he shall have visitation with Kaitlin one evening during each week, from 3:00 p.m. until 8:00 p.m.

We find this schedule confusing. It seems that Chad is entitled to visitation on alternate weekends. On the opposing weekends when he would not otherwise have visitation, he may have visitation if his work schedule permits and he provides advanced notice. Since John's visitation schedule with Emmalin is similar, both men could essentially exercise visitation every weekend, depriving Patricia and the girls of one another's company every weekend. This defeats the purpose of our order. We modify Chad's visitation with Kaitlin by eliminating paragraph b. We remand this case for the limited purpose of allowing the district court to establish a new weekend visitation schedule that ensures Kaitlin and Emmalin have a chance to spend some time together on weekends and holidays. Before establishing a new schedule, the district court should provide opportunity for input from the parties.

Costs of this appeal are taxed one half each to Chad McCuen and Patricia Brodersen.

AFFIRMED AS MODIFIED; REMANDED WITH DIRECTIONS.