IN THE COURT OF APPEALS OF IOWA

No. 0-497 / 99-1719
Filed September 13, 2000

IN RE THE MARRIAGE OF JULIE ANN KRAFT AND MICHAEL KELLY PETERSON

Upon the Petition of
JULIE ANN KRAFT,
Petitioner-Appellant,

FILED
SEP 13 2000
CLERK SUPREME COURT

And Concerning
MICHAEL KELLY PETERSON,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Petitioner appeals from the order dissolving her marriage. **AFFIRMED.**

Thomas P. Schlapkohl and Stephanie L. Brick Drey of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellant.

Michael K. Peterson, St. Louis, Missouri, pro se.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

Julie Kraft claims her ex-husband, Michael Peterson, should not be entitled to five weeks of summer visitation and two mandatory telephone calls per week with their children. She also claims the parties' dissolution decree should have explicitly required them to jointly determine when and how their children should be told about their father's sexual orientation. We affirm.

I. Background Facts & Proceedings.

Kraft and Peterson married in 1989. Their marriage ended roughly ten years later after Peterson disclosed he was homosexual. Kraft and Peterson have joint legal custody of their children, Gabrielle (born September 1993) and Keenan (born November 1995). Kraft is the children's primary caregiver.

Following a trial and a hearing on Kraft's motion to reconsider, the district court entered a dissolution decree granting Peterson five weeks of summer visitation and two mandatory phone calls per week. Kraft also wanted the dissolution decree to include language requiring the parties to jointly determine when and how the children should be told about Peterson's sexual orientation.[1] The court did not include a provision relating to Peterson's sexual orientation.

Kraft appeals, claiming the decree should have included such a provision. She also opposes the decree's summer visitation and phone call provisions.

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[1] At trial, Kraft initially argued the decree should have a "morality clause" forbidding either parent from exposing their children "to the intimate details of their respective romantic relationships while unmarried." She has acknowledged this is likely beyond the district court's legal authority and, at the hearing on posttrial motions, argued for the inclusion of the provision discussed above.

II. Timeliness.

Peterson contends Kraft's appeal was not timely filed. Peterson's contention has no merit. A party must file a notice of appeal within thirty days of the district court's entry of an order, judgment, or decree. Iowa R. App. P. 5. Such appeal must generally be from a final judgment or decision. Iowa R. App. P. 1. A ruling is not a final judgment or decision when the district court intends to do something further to signify its final adjudication of the case. *In re Marriage of McCreary*, 276 N.W.2d 399, 400 (Iowa 1979).

Kraft's appeal was timely because she filed her notice of appeal within thirty days of the district court's entry of the dissolution decree. Although the court had previously entered its findings of fact and conclusions of law and a ruling on her motion to reconsider and to submit additional evidence, her notice could not have been properly filed within thirty days of these rulings because they were not final decisions. The court, in its findings of fact and conclusions of law, required Kraft's attorney to prepare a dissolution decree for its approval. In a subsequent order, the court extended the submission date of the decree until after the court disposed of the parties' posttrial motions. The court intended the decree—not either of these rulings—to be the final word on the parties' dissolution. *See McCreary*, 276 N.W.2d at 400 ("When a ruling specifically provides for subsequent entry of a final order, the ruling itself is not a final judgment or decision."). We have jurisdiction to decide this appeal.

III. Dissolution Decree Provisions.

We review equity cases de novo. Iowa R. App. P. 4; *see In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district

court's findings of fact, but do give them deference because the court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. Iowa R. App. P. 14(f)(7); *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). 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).

A. Disclosure Provision.

Kraft argues the parties' dissolution decree should require them to jointly determine when and how Gabrielle and Keenan should be told about Peterson's sexual orientation. The original decree grants Kraft and Peterson joint legal custody of their children and states "[b]oth parties shall participate equally in the rights and responsibilities of legal custodians, including but not limited to, decisions affecting the children's legal status, medical care, education, extracurricular activities, and religious training." According to Kraft, the disclosure of Peterson's sexual orientation is as important as the decisions affecting the children's education and religious training and thus should also be included in the decree as a decision to be made by both parents.

Even if this issue is of the same importance and significance as decisions involving Gabrielle and Keenan's legal status, medical care, education, extracurricular activities, and religious training, the decree need not explicitly address it. The decree's list, like the statute it mirrors, is not all-inclusive. *See* Iowa Code § 598.41(5) (1999). Moreover, the district court's grant of joint legal custody to Kraft and Peterson presupposes they can communicate with each other regarding the basic decisions that must be made in the upbringing of their

children. *Cf. In re Marriage of Miller*, 390 N.W.2d 596, 601-02 (Iowa 1986) (refusing to grant joint legal custody where the hostility between the divorced parents and their inability to communicate effectively prevented their equal participation in decisions affecting their children). We see no need to precisely prescribe what all of these decisions are, nor how they should be made. *Cf. In re Marriage of Craig*, 462 N.W.2d 692, 694-95 (Iowa App. 1990) (refusing to prescribe what type or form of religious instruction divorced parents should provide for their children or to specify what parent should be responsible for the instruction). Peterson testified he has no intention of exposing Gabrielle and Keenan to anything that would be harmful to their best interests. A provision in the parties' dissolution decree requiring them to jointly determine when and how Gabrielle and Keenan should be told about Peterson's sexual orientation would needlessly involve the courts in these relationships. The trial court is affirmed.

B. Visitation Provisions.

Kraft also argues Peterson should not have been granted five weeks of summer visitation and two mandatory telephone calls per week with Gabrielle and Keenan. The governing consideration in establishing Peterson's visitation rights is the best interests of his children. *See In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa App. 1992). Their best interests will be met through liberal visitation that assures them the opportunity for maximum continuing physical and emotional contact with both Kraft and Peterson. *See In re Marriage of Riddle*, 500 N.W.2d 718, 720 (Iowa App. 1993); *see also* Iowa Code § 598.41(1) (1999). Because the decree's summer visitation and phone call provisions advance this goal, we affirm the district court.

Kraft denies she is attempting to punish Peterson or restrict his parental rights because he is homosexual. Rather, she claims five weeks of summer visitation is simply "too much" for her young children. Five weeks is not excessive. Only two weeks of the visitation may be consecutive. Moreover, by the summer of 2001 Gabrielle and Keenan will be seven years old and five years old respectively and better able to cope with extended absences from their primary caregiver. Finally, the record does not show the children suffered any harm under their father's care before their parents divorced—nor does it show they will suffer any harm by spending five weeks with him over the course of the summer.

The decree's visitation provisions are also appropriate notwithstanding the disruption they may cause in the lives of Kraft, Gabrielle, and Keenan. Because Peterson is entitled to five weeks of summer visitation, Gabrielle and Keenan may have to forego some of the extracurricular summer activities in their hometown. Likewise, because Peterson has two mandatory phone calls per week with the children, they must be at a specific place at a specific time to receive those calls. However, whatever burdens these provisions place on Kraft and the children, they are outweighed by the primary goal of the parties' dissolution decree: promoting the best interests of Gabrielle and Keenan by assuring them the opportunity for maximum continuing physical and emotional contact with *both* of their parents. *Cf. Burrell v. Burrell*, 256 Iowa 490, 495-96, 127 N.W.2d 78, 81 (1964) ("We have held many times the welfare of the child is the controlling consideration and is superior to the claim or convenience of either parent."), *overruled on other grounds by Anthony v. Anthony*, 204 N.W.2d 829,

833 (Iowa 1973). We will not, therefore, alter the district court's original dissolution decree.

IV. Attorney Fees.

Kraft has requested an award of attorney fees for this appeal; Peterson has also requested a reimbursement for the costs he has incurred.[2] In evaluating such requests, we consider the needs of the requesting party, the ability of the other party to pay, and whether the requesting party was obligated to defend the district court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). In light of these factors, we deny both Kraft's and Peterson's requests.

AFFIRMED.

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[2] Peterson, a nonpracticing attorney, handled this appeal pro se.