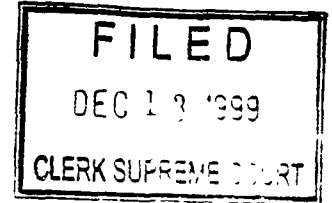


IN THE COURT OF APPEALS OF IOWA

No. 1999-98 (9-285) / 98-1700
Filed December 13, 1999



**IN RE THE MARRIAGE OF CHRISTOPHER A. PERSINGER
AND LESLIE K. PERSINGER**

Upon the Petition of
CHRISTOPHER A. PERSINGER,
Petitioner-Appellant,

And Concerning
LESLIE K. PERSINGER,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos,
Judge.

Christopher Persinger appeals from the district court's decision modifying the
visitation provisions of the parties' dissolution decree. **AFFIRMED.**

Dawn E. Mastalir of Berenstein, Moore, Berenstein, Heffernan & Moeller,
L.L.P., Sioux City, for appellant.

Kendra M. Zirbel Olson, Sioux City, for appellee.

Heard by Streit, P.J., Vaitheswaran, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

STREIFF, P.J.

The dissolution decree of Christopher and Leslie Persinger granted Christopher the powerful tool of sole discretion in granting Leslie visitation with their only son, Jericho. Prevented from exercising meaningful visitation with Jericho, Leslie successfully sought modification of the visitation arrangement. Christopher now appeals, contending Leslie failed to prove the requisite substantial change of circumstances for modification. Because the constraints Christopher placed on Leslie's visitation operated as a material change of circumstances and it is in Jericho's best interests to have increased contact with his mother, we affirm.

I. Background Facts & Proceedings.

Christopher and Leslie Persinger were married on September 2, 1995, and have one child, Jericho, born June 4, 1995. Leslie did not appear for the parties' dissolution trial, and the marriage was dissolved by a default decree entered on October 14, 1997. The decree awarded joint legal custody but gave Christopher sole physical care of Jericho. Leslie's visitation was limited to occasions agreed upon by Christopher with a notice of forty-eight hours, and no overnight visitation. This arrangement often led to Leslie being denied visitation because Christopher had other plans and increased her travel time as she often had to pick up Jericho from relatives living in a nearby town.

Leslie filed a petition to modify the primary care and visitation provisions of the decree. Following a hearing, the court ruled Leslie failed to prove primary care

should be changed, but specified her visitation rights. The court found: (1) Christopher's unfettered discretion in permitting visitation prevented Leslie from having meaningful contact Jericho; and (2) it was in Jericho's best interests to have extended visitation with his mother.

Christopher appeals, contending Leslie failed to prove the requisite substantial change of circumstances for modification.

II. Standard of Review.

In an equity action our review is de novo. *In re Marriage of Brauer*, 511 N.W.2d 645, 646 (Iowa App. 1993). We have a duty to examine the entire record and adjudicate anew the issues properly presented. *Id.* We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

III. The Merits.

To justify a change in visitation, a party must show there has been a change of circumstances not contemplated by the trial court at the time the decree was entered. *See In re Marriage of Rykhoek*, 525 N.W.2d 1, 3 (Iowa App. 1994). The burden in a modification of visitation rights is different than the burden in a child custody case. *Id.* "The burden to change a visitation provision in a decree is substantially less than to modify custody." *In re Marriage of Wersinger*, 577 N.W.2d 866, 868 (Iowa App. 1998). Disruption of the visitation arrangement that hinders one parent's access to the child may constitute a material change in circumstances. *Dale v. Pearson*, 555

N.W.2d 243, 245-46 (Iowa App. 1996). Generally, liberal visitation is in a child's best interest as it maximizes physical and emotional contact with both parents. See Iowa Code § 598.41(1)(a) (1997).

The trial court properly modified Leslie's visitation rights. Due to Leslie's failure to appear at trial, the original decree correctly permitted Christopher unfettered discretion in allowing visitation. Yet, the ability of one parent to unilaterally permit or deny visitation virtually begs for abuse. Christopher used this court-sanctioned tool to dictate where Jericho was to be picked up and dropped off and when Leslie could see him. These series of hoops prevented Leslie and Jericho from building an appropriate parent-child bond. We recognize Leslie's occasional bouts with instability, but the importance of nurturing a strong relationship between parent and child outweighs her relatively minor failings. Because the constraints Christopher placed on Leslie's visitation operated as a material change of circumstances and it is Jericho's best interests to have increased and specified contact with his mother, we affirm the trial court.

AFFIRMED.