

FILED

APR 23 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF VALERIE ANN NIEMANN AND KEVIN FREDERICK NIEMANN

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Upon the Petition of	)	
VALERIE ANN NIEMANN,	)	Filed April 23, 1986
Petitioner-Appellant,	)	
And Concerning	)	
KEVIN FREDERICK NIEMANN,	)	<u>6-22</u>
Respondent-Appellee.	)	85-666

Appeal from the Iowa District Court for Fayette County (40123) - Forest
E. Eastman, Judge.

Petitioner appeals the provisions of a dissolution decree entered by the
district court. **AFFIRMED.**

James S. Updegraff, West Union, Iowa, for petitioner-appellant.

John S. Tremaine of Murphy & Tremaine, Sumner, Iowa, for
respondent-appellee.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Petitioner Valerie Niemann appeals the provisions of a dissolution decree entered by the district court. She contends the visitation provisions are inequitable and the child support is insufficient. We affirm.

The parties were married and lived in Denver, Iowa, from 1976 to 1984. They have two children from this marriage and both are still under 10 years of age. After their separation in 1984, petitioner moved with the children to a Chicago suburb where she works as a market analyst. Respondent is an independent over-the-road trucker. The trial court found that petitioner's annual income is approximately \$24,000 plus commissions, and that respondent's income is approximately \$12,000.

The parties are both in good health and are both loving parents. They have agreed that joint custody would be proper and that petitioner should be awarded physical custody.

Shortly before separating, the parties filed for bankruptcy. The trial court determined that any money returned from the bankruptcy court should first be applied to outstanding debts and then divided equally between the parties. Each party was awarded the property that was then in his or her respective possession and they were each, in turn, to be responsible for the debts arising from the property.

Prior to the decree, respondent was ordered to pay \$50 per week as temporary child support. Subsequently, the trial court entered a decree ordering respondent to pay \$150 per month per child. The decree also provided that any delinquent child support owed by respondent shall be deducted from his share of any money returned from bankruptcy court.

The issues we are asked to decide concern the visitation and support provisions of the decree. Our review of this equity proceeding is de novo. Our

responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa App. 1981). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Id.; Iowa R. App. P. 14(f)(7).

I. Visitation. The trial court granted respondent father liberal visitation rights. Respondent is entitled to visit the children during the spring school vacation from Saturday to the Sunday of the following week. During Christmas, he is allowed to visit the children from December 26th to the last day of vacation in odd-numbered years, and during the entire vacation of the even-numbered years. He is also entitled to have the children for four continuous weeks of the summer following the first Saturday in July. Finally, respondent is given the right, on one day's notice, to visit the children when he is in Chicago. The decree also provides that when the children are transported to Denver from Chicago, respondent is to pay for the expenses bringing them to Denver, and petitioner is to pay for the expenses incurred in returning them to Chicago.

Petitioner argues that this amount of visitation is excessive and seriously deprives her of time that she is able to spend with the children. We cannot agree. Visitation, like custody, is determined by the best interests of the children. In re Marriage of Hubbard, 315 N.W.2d 75, 79 (Iowa 1982). Ordinarily, it is in the child's best interest to have continued association with the noncustodial parent through visitation. Id. We are not convinced that respondent's visitation rights are excessive. Therefore, we decline to disturb the trial court's decision on this issue.

II. Child Support. Petitioner contends that the trial court set the amount of child support too low. Respondent was ordered to pay \$150 per month per child.

Child support should be fixed on a case-by-case basis and legal precedents are of little help in arriving at the amount to be set. Cooper v. Cooper, 259 Iowa 277, 282, 144 N.W.2d 146, 149 (Iowa 1966). Both parents have an obligation to support their children although not necessarily equally, but proportionately according to their ability and circumstances. See In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984). Determining the level of child support involves the consideration of numerous factors. Those factors are set out in section 598.21(4), Code of Iowa 1985. Important to that determination, is a determination of the ability of the noncustodial parent to pay support.

After considering all of the relevant circumstances surrounding each party's ability to contribute to the welfare of the children, we conclude the trial court's decree was equitable and reasonable. We choose not to disturb its decision on this issue.

Petitioner also argues, on appeal, that the trial court erred in failing to provide for automatic adjustments in child support payments to reflect increases in the consumer price index and in respondent's income. She also alleges at this time that the trial court erred in failing to extend child support through post-high school education. We note, however, that she raises these issues for the first time on appeal. Issues not raised in the trial court may not be raised on appeal. See Tigges v. City of Ames, 356 N.W.2d 503, 507 (Iowa 1984).

The trial court ordered the parties to pay their own attorney fees and divided the costs of this action equally. We affirm that decision and further order that the parties shall pay their own attorney fees on appeal.

We have considered those issues properly preserved for appeal and affirm the trial court's decree dissolving the parties' marriage and all provisions therein.

AFFIRMED.