IN THE COURT OF APPEALS OF IOWA

No. 1-705 / 01-241
Filed December 12, 2001

IN RE MARRIAGE OF FRANKIE LEIGH LEYEN AND KEVIN J. LEYEN

Upon the Petition of
FRANKIE LEIGH LEYEN,
Petitioner-Appellee,

And Concerning
KEVIN J. LEYEN,
Respondent-Appellant.

FILED
DEC 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

The respondent appeals a district court ruling denying his petition to modify the visitation provisions of the parties' dissolution decree. **AFFIRMED.**

Timothy J. Luce of Anfinson & Luce, P.L.C., Waterloo, for appellant.

Kent L. Geffe of Welp & Geffe Law Offices, Marshalltown, for appellee.

Considered by Hayden, P.J., C. Peterson, and Harris, S.J.*
*Senior judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

HAYDEN, S.J.

The parties, Frankie (Leigh) and Kevin Leyen, were married in May 1991. They had one child, Nicole, born December 13, 1994. Their marriage was dissolved in June 1997. Leigh was granted Nicole's physical care and Kevin was granted reasonable visitation.

At the time of trial, Nicole was entered in school and she was in kindergarten. During this time period Kevin's visitation privileges are Wednesday evenings and every other weekend from 5:00 p.m. Friday until 6:00 p.m. Sunday. He is also entitled to visitation on alternating holidays from 9:00 a.m. until 6:00 p.m., and three non-consecutive one-week visits during the summer. The dissolution decree incorporated the parties' stipulation regarding child custody, visitation and support.

In November 1999, Kevin petitioned to modify the visitation provisions of the decree. He claims Leigh has refused any additional visitation with Nicole and her strict adherence to the decree's terms often made his visitation difficult. Leigh agreed to extend the termination time for holiday visitation to 7:30 p.m. and to include visitation during alternate spring breaks. The trial court modified the decree to this extent. In all other respects, Kevin's petition to modify the dissolution decree was denied. Kevin appeals. We affirm.

Kevin has two children by a prior marriage. Both parties have remarried and they each have a child with their present spouses.

Historically, Kevin has physically and verbally abused Leigh. On one occasion he struck Nicole. The record shows repeated instances of verbal and emotional abuse by Kevin. He makes demeaning comments about Leigh to

Nicole. After extended visits with Kevin Nicole's behavior changes. She cries and acts-out aggressively towards others.

On at least one occasion Leigh denied Kevin's request for additional time at Christmas. In addition, the parties have had mis-understandings about certain times of visitation. The parties continued to be angry and shout at each other from time to time. Kevin is dissatisfied because Leigh will not grant him more time with Nicole than the times specified in their stipulation. Their stipulation in the original decree set out the periods of Kevin's visitation, including the time to pick her up and the time to return her to Leigh.

I. Scope of Review

Our review of this equity case is de novo. Iowa R. App. P. 4.

II. Modification of Visitation

The parent who wants to modify a dissolution decree provision has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances since entry of the decree. That parent must also prove that increased visitation is in the child's best interest. *In re Marriage of Salmon,* 519 N.W.2d 94, 95-96 (Iowa Ct. App. 1994).

The changed circumstances relied upon must be material and substantial, not trivial, more or less permanent or continuous, not temporary, and must be such as were not within the knowledge or contemplation of the trial court when the decree was entered. *In re Marriage of Ales,* 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

We determine the stipulation the parties signed in the original decree of dissolution and the agreement and concessions Leigh made during the trial of this matter are reasonable.

Although we are not bound by the trial court's findings, we do give them weight for it is the trial court who has the parties before it and is in the best position to make determinations of credibility. *In re Marriage of Sprague*, 545 N.W.2d 325, 327 (Iowa Ct. App. 1996).

We hold Kevin has failed to show by a preponderance of the evidence there has been a material change in circumstances since the entry of the decree of dissolution. In addition, he has failed to prove increased visitation is in the best interest of Nicole.

AFFIRMED.