

FILED

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

JOHN THOMAS MOORE,

Appellant,

v.

ABBY JANE MOORE,

Appellee.

Filed September 21, 1978

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3-61606

Appeal from Black Hawk District Court - William G. Klotzbach, Judge.

Petitioner father appeals from the trial court's denial of his application to limit the visitation rights of respondent to the state of Iowa. Modified and affirmed.

Richard P. Moore, of Moyer & Bergman, Cedar Rapids, for appellant.

Carol A. Turner, of Waterloo, for appellee.

Heard by Donieison, Acting C.J., Snell, Oxberger and Carter, JJ.

Petitioner, John Thomas Moore, appeals from the decision of the trial court which denied his application to limit the visitation rights of respondent, Abby Jane Moore. The pertinent visitation rights are established in a modifying decree which provided for Heather, born April 27, 1970, to visit in the home of her mother for six weeks each summer. At the time of said modification, Abby lived with her present husband in Vermillion, South Dakota. John is employed as a high school teacher in Marion, Iowa.

Abby and her husband are separated and she plans to move to Vancouver, Washington. John objects to the visitation rights being exercised outside the state of Iowa, citing past difficulties he encountered in obtaining Heather's return from Abby after a visit. On one occasion Abby and Heather hid in a cornfield for four and one-half hours when Abby knew the sheriff was looking for them.

Our review of this case is de novo. Rule 4, Rules of Appellate Procedure. We give weight to the fact findings of the trial court but are not bound by them. Rule 14(f)(7), R. App. P. To justify a modification of visitation rights there must be a demonstrated change of circumstances but such change may be much less extensive than would be necessary to obtain custody. *Glass v. Glass*, 213 N.W.2d 668, 670 (Iowa 1973).

In reviewing the record we find a change of circumstances has occurred. Abby's past refusal to return Heather to John has caused him considerable financial and emotional hardship. The move by Abby to the state of Washington compounds this problem. While we are not persuaded visitation rights should be limited to the state of Iowa, we find the summer visitation is too long. Accordingly, we hereby modify the period of visitation of Heather in the home of Abby from six to four weeks in the summer. Appellant shall pay the costs of this appeal.

Modified and affirmed.

Donielson, Acting C. J., concurs specially.

DONIELSON, Acting C. J. (specially concurring)

I view the personal hygiene condition of Heather when she returns from her visits with Abby as appalling. Her communication skills obviously deteriorate badly when she is with Abby. Further, Abby's disregard of court orders and disobedience of lawful authority is a matter of grave concern. I do not view the majority opinion as sufficiently expressing the closeness of the decision and the need for immediate action by the court if any similar events occur. Nonetheless, taking these matters into account, I join with the majority opinion.