IN THE COURT OF APPEALS OF IOWA

No. 1-176 / 00-0796
Filed May 9, 2001

IN RE THE MARRIAGE OF ZOE LEAH VERCHOTA AND RICHARD JOSEPH VERCHOTA, JR.

Upon the Petition of
ZOE LEAH VERCHOTA,
Petitioner-Appellant,

FILED
MAY 0 9 2001
CLERK SUPREME COURT

And Concerning
RICHARD JOSEPH VERCHOTA, JR.,
Respondent-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

The petitioner appeals the child custody provisions of the parties' dissolution decree. **AFFIRMED.**

John G. Sorensen of Stanton & Sorensen, Clear Lake, for appellant.

Donald E. Esser of Finley, Teas & Esser, Mason City, for appellee.

Nancy Lynn Robertson, Des Moines, amicus curiae for Iowa Coalition Against Domestic Violence.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Zoe Verchota appeals the child custody provisions of the parties' dissolution decree. She contends the district court erred in: (1) failing to issue a permanent injunction against her ex-husband, Richard; and (2) awarding liberal visitation to Richard given the court's finding he was the perpetrator of domestic abuse against her. We affirm.

I. Factual Background and Proceedings. Zoe and Richard Verchota were married on May 4, 1996. One child was born to the marriage, Joseph, on March 20, 1997. At the time of trial, Zoe was thirty-seven years old and Richard was forty-one years old. They are both employed full-time and are in good health.

The parties separated in December of 1998, primarily due to physical and emotional abuse inflicted upon Zoe by Richard. On December 9, 1998, the district court entered a temporary protective order enjoining Richard from contact with Zoe. At trial in this matter, Zoe requested sole custody of Joseph, with limited supervised visitation with Richard, and further requested the district court to make the temporary protective order permanent. On April 14, 2000, the district court entered its findings of fact, conclusions of law, and decree granting sole custody of Joseph to Zoe, and allowing Richard to exercise liberal unsupervised visitation. The district court denied Zoe's request for entry of a permanent injunction against Richard. Zoe appeals, contesting both the visitation and injunction portions of the decree.

Prior to transfer of this case to our court, Zoe filed a document entitled "Advice to the Court," stating Zoe had recently moved to Alaska with Joseph, apparently with the knowledge, understanding, and acquiescence of Richard. Counsel for Richard sent a letter to the clerk of the supreme court regarding Zoe's move to Alaska, suggesting he believed the change in geographic circumstances rendered the issues on appeal moot and he expected Zoe to dismiss the pending appeal. As of the date of the filing of this opinion, neither party has moved to dismiss the appeal.

II. Standard of Review. Our standard of review in dissolution of marriage proceedings is de novo. *In re Marriage of Wagner,* 604 N.W.2d 605, 608 (Iowa 2000).

III. Permanent Injunction. Zoe contends the district court should have ordered an injunction barring Richard from any contact with her. The grant or denial of injunctive relief is largely within the sound discretion of the district court under the facts of the particular case. *In re Marriage of Knight,* 507 N.W.2d 728, 731 (Iowa Ct. App. 1993).

> It is elementary that a court of equity will not resort to the granting of injunctive relief unless it appears there is an invasion or threatened invasion of a right, and that substantial injury will result to the party whose rights are so invaded, or such injury is reasonably to be apprehended. An injunction is an extraordinary remedy and must not be granted when an ordinary remedy will do.

Id. (quoting *Hughes A. Bagley, Inc. v. Bagley,* 463 N.W.2d 423, 425 (Iowa Ct. App. 1990)).

An ex parte temporary protective order was entered on December 9, 1998, restraining Richard from contact with Zoe and ordering any visitation

between Richard and Joseph to be supervised. On February 8, 1999, the district court held a hearing on the issue of establishing a temporary visitation schedule. After hearing evidence from both parties, the court established a visitation schedule that permitted Richard unsupervised visitation with Joseph on Tuesday and Thursday evenings from 4:30 p.m. to 7:30 p.m. and on Saturdays from 11:00 a.m. to 7:00 p.m. This visitation schedule was in effect from the entry of the ruling establishing the temporary schedule until entry of the district court's decree on April 14, 2000. In its decree, the district court found Richard regularly exercised the visitation granted to him under the temporary order. There was no evidence Richard conducted himself during visitation in a way that negatively affected Joseph's best interests. Additionally, Richard initiated anger management counseling during the pendency of the temporary protective order and completed a batterer's education program.

Although there is evidence Richard attempted to contact Zoe by telephone on at least two occasions during the time the protective order was in effect, the district court found Richard's conduct was not contumacious. We agree with this finding and adopt it as our own. After reviewing the record before us on appeal, we find no evidence Richard continued to harass Zoe or engage in abusive behavior during the time the protective order was in place. The evidence presented at trial indicates Richard has addressed his anger management issues and seems sincere about changing his behavior. We therefore affirm the district court's denial of a permanent injunction against Richard.

IV. Visitation. The decree provides visitation between Joseph and Richard every Tuesday and Thursday from 5:00 p.m. to 8:00 p.m., every other weekend from Friday at 5:00 p.m. to Sunday at 7:00 p.m., several weeks in the summer, and alternating holidays. Zoe contends the district court erred by granting Richard such visitation in light of its finding their relationship was marked by a "history of domestic abuse." Specifically, she argues the district court failed to appropriately address the negative impact domestic abuse has on children and incorrectly concluded the abuse between Zoe and Richard would end as a function of their marriage ending.

Our governing consideration in defining visitation rights is the best interests of the child, not the interests of the parents. *See In re Marriage of Brainard,* 523 N.W.2d 611, 615 (Iowa Ct. App. 1994). Liberal visitation rights are generally in the best interests of children. *See* Iowa Code § 598.41(1) (1999); *In re Marriage of Muell,* 408 N.W.2d 774, 777 (Iowa Ct. App. 1987). Unless visitation with the noncustodial parent will in some way injure the child, it is not to be prohibited. *In re Marriage of Riddle,* 500 N.W.2d 718, 720 (Iowa Ct. App. 1993). We do not dispute the evidence indicating Richard engaged in clearly inappropriate behavior while he and Zoe were married. We recognize Joseph was occasionally present during these episodes and agree with Zoe that abuse inflicted upon her by Richard in the parties' home likely had a negative impact on Joseph. However, the record shows the abuse did not continue after the parties separated, and we are not persuaded the visitation schedule ordered by the district court is antithetical to Joseph's best interests.

As noted above, the "Advice to the Court" filed January 29, 2001, stated Zoe moved to Alaska with Joseph, with Richard's consent. Her relocation to Alaska from Iowa clearly makes a visitation schedule including weekday and weekend visitation as rendered in the decree unworkable. However, the record as it exists on appeal is inadequate for this court to adjudicate an appropriate visitation schedule under the present circumstances. A modification action on the issue of visitation is currently pending in district court, where a suitable resolution of the visitation issue may be achieved.

AFFIRMED.