FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RICHARD BERNARD PATES, JR.
AND BRENDA ELLA PATES

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Upon the Petition of	)	
RICHARD BERNARD PATES, JR.,	)	Filed September 25, 1986
Petitioner-Appellee,	)	
And Concerning	)	
BRENDA ELLA PATES, n/k/a BRENDA ELLA DOBSON,	)	6-214 86-38
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Butler County (Equity 417) M. L. *Mason*, Senior Judge.

Respondent appeals from a modification of the decree dissolving the parties' marriage. **REVERSED AND REMANDED.**

G. Michael Kealhofer of *Spellman*, Spellman, Spellman, Spellman & Kealhofer, Perry, Iowa, for appellant.

Susan R. Flander of Shepard & Shepard, *Allison*, Iowa, for appellee.

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

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Respondent appeals from a modification of the decree dissolving the parties' marriage. The modification shifted physical care of the child to the petitioner. On appeal respondent asserts that she should have retained physical care of the child.

The parties were married on October 20, 1979. The only child of this union, Joshua, was born November 4, 1979. On January 14, 1981, the parties were divorced. In the court's decree petitioner was granted visitation every other Sunday from noon until six-thirty. From January 1981 until April 27, 1981, petitioner was allowed to exercise his visitation rights twice.

On April 27, 1981, petitioner left for Army boot camp. During July 1981 while on leave, the parties entered into a new stipulation regarding petitioner's visitation while in the service. On July 27, 1981, another stipulation was filed in Butler County Court which provided for petitioner's parents' visitation, visitation during military leave, and visitation upon the petitioner's discharge from the service. The terms of this stipulation were never complied with. As a result of the parties' inability to cooperate, several filings were made, including various contempt proceedings; none of these were brought before the trial court, generally because the parties reached agreement on their own. There is no question but that respondent has been very uncooperative, but petitioner has also shown a lack of effort in contacting the child.

From August 27, 1981, to June 24, 1985, petitioner saw his son for two days in June of 1983, in August of 1984 for two weeks, and for approximately five weeks in May and June of 1985. The excuses and alleged reasons for this dismal record of visitation are too numerous and conflicting to warrant our listing them. We note the fact that during approximately a four-year period petitioner was able to spend a little over seven weeks with his son. Cooperation

between the parties has completely broken down. The last attempt at negotiation of a stipulation occurred from August of 1984 to May of 1985; these discussions resulted in no agreement.

Currently respondent is remarried and lives in Bode, Iowa. She is a homemaker and her husband is employed at the elevator in town. Since her remarriage on November 24, 1984, respondent and her husband have had a son. Since Joshua's birth he has lived continuously with respondent.

Petitioner has also remarried and is currently residing in Golden, Colorado. He has a two-year-old child from his present marriage. His family resides in a two-bedroom apartment and his financial condition is such that he would be able to fulfill all of Joshua's financial needs.

Before trial, the parties stipulated that a joint custody arrangement would be appropriate, leaving for the court the issues of physical care, child support, and visitation. The trial court found respondent had frustrated nearly all of petitioner's attempts to exercise his visitation rights since the dissolution decree. Based upon these findings and Iowa Code sections 598.1(6) and 598.41(1) (1985), the court entered an order modifying the dissolution decree by giving petitioner physical care of Joshua and providing liberal visitation for respondent.

We note respondent's trial counsel did not file a brief with the trial court and prior to appeal her counsel's license was suspended in Committee on Professional Ethics and Conduct v. Blomker, 379 N.W.2d 19 (Iowa 1985), and recently revoked.

This appeal presents the question of whether denial of visitation, in and of itself, is sufficient to shift the physical care of the child to the party denied visitation.

Our review of a trial court decision to modify a child custody decree issued pursuant to a dissolution is de novo. In re Marriage of Leyda, 355 N.W.2d 862, 864 (Iowa 1984).

The party seeking physical care has the burden of showing by a preponderance of evidence that conditions, since the dissolution decree was entered, have so materially and substantially changed that the children's best interest would be best served by changing physical care. In re Marriage of Jerome, 378 N.W.2d 302, 304 (Iowa Ct. App. 1985). Also, "a finding that one of the parents can minister more effectively to the routine daily needs of the children is an essential predicate to an award of physical care." In re Marriage of Frederici, 338 N.W.2d 156, 160 (Iowa 1983).

The trial court based its decision on Iowa Code sections 598.1(6) and 598.41(1), which respectively provide, in pertinent part, as follows:

> "Best interest of the child" includes but is not limited to, the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child. (Emphasis added.)
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> The Court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child is likely to result from such contact with one parent, and which will encourage the parents to share the rights and responsibilities of raising the child. The Court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent without just cause, a significant factor in determining the proper custody arrangement. (Emphasis added.)

Along with these statutes we recognize the general policy that the children of a divorce need to maintain meaningful relationships with both parents and any attempt to alienate a child will reflect adversely on a parties' custodial abilities. In re Marriage of Gravatt, 371 N.W.2d 836, 840 (Iowa Ct. App. 1985).

However, in determining physical care the status of care should be quickly fixed and left undisturbed. In re Marriage of Bolin, 336 N.W.2d 441, 447 (Iowa 1983). Further, in Frederici, the Supreme Court stated:

> The significance of an award of physical care should not be minimized. Children are immediately, directly, and deeply affected by the kind and quality of home that is made for them. Courts should not interfere with that status any more readily than other aspects of the children's legal status.

338 N.W.2d at 160. Finally, regarding joint custody, the Supreme Court provided, "Problems are likely to develop under any custodial arrangement. The adults must have the maturity to put their personal antagonisms aside and attempt to resolve the problems. The existence of problems does not justify a change in custody." Bolin, 336 N.W.2d at 447.

After a lengthy and time-consuming review of the record, we find there is no showing that petitioner can minister more effectively to Joshua's needs.

As set forth in both 498.1(6) and 598.4(1), contact with both parents is a factor to consider when determining custody. There is evidence that respondent's lack of cooperation led to the alienation of Joshua from his father. On the other hand, petitioner's efforts, over the last four years, to communicate with his son, have been less than determined. Our determination, hereinafter stated, results from a careful review of both family situations.

We consider the petitioner's right to visitation versus Joshua's need for visitation and his right to a stable and consistent home life. Our polestar is the child's best interest. Joshua has lived with his mother since his birth. There

is no question but that respondent is a good mother. In Bode, Iowa, Joshua has a nice home, a stepbrother, and a community which he is familiar. He will be entering first grade this year. Joshua's stepfather considers him as his own son and it was shown that Joshua is very closely tied to his mother.

The evidence showed petitioner's home in Golden, Colorado, to be a suitable household for Joshua. But the evidence failed to prove petitioner more able to minister to the daily needs of the boy. Due to these findings, we conclude the conditions have not so materially and substantially changed that the child's best interest would be served by changing physical care.

We fully recognize the need for visitation and its benefit to both parent and child. We also consider an attempt to interfere with visitation extremely reprehensible. In the present case the best interests of Joshua will be most fully served by his continued physical care with his mother and liberal visitation with his father. Such visitation rights shall be carefully and closely enforced.

We reverse and award physical care of Joshua to respondent. We remand with instructions for the district court to determine petitioner's child support obligation and to detail liberal visitation for petitioner.

REVERSED AND REMANDED.