

IN THE COURT OF APPEALS OF IOWA

FILED
MAY 31 1979
CLERK SUPREME COURT

39

IN RE THE MARRIAGE OF DEBORAH L. DIGGINS and JAMES PATRICK DIGGINS

Upon the Petition of)

DEBORAH L. DIGGINS,)

Filed May 31, 1979

Petitioner-Appellee,)

And Concerning)

118
2-62068

JAMES PATRICK DIGGINS,)

Respondent-Appellant.)

Appeal from Pottawattamie District Court - Harold L. Martin, Judge.

Respondent husband appeals from the visitation provision in the decree of dissolution, asserting that trial court's award to him of three hours of visitation on alternate Sundays in the residence of the wife is insufficient, unjustified and not in the best interests of the parties' minor son. AFFIRMED AS MODIFIED.

C. Adam Schulte of Logan & Schulte, Council Bluffs, Iowa, for appellant.

Thomas Root of Pogge, Root and Steege, Council Bluffs, Iowa, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent, James Diggins, appeals from the visitation provision in the decree of dissolution which awarded him three hours of visitation on alternate Sundays at the residence of petitioner, Deborah Diggins. We affirm and modify the decision of the trial court.

Our review in the instant case is de novo. Iowa R. App. P. 4. The best interest of a child whose custody has been granted to his mother requires continuing association with his father and other paternal relatives unless the contrary is clearly shown. In re Marriage of Morton, 244 N.W.2d 819, 821 (1976). Prior to the entry of the dissolution decree, the parties had an informal visitation agreement whereby respondent was allowed to visit the child every other weekend. Respondent, although living quite some distance from the child, regularly exercised these visitation rights from October, 1977 until March, 1978 (the date of the dissolution hearing). At the hearing, Deborah expressed fears that a continuation of this type of a visitation arrangement would result in harm to the child. We find her fears to be greatly exaggerated and unsupported by the record before us. Although respondent's behavior in the past has at times been less than exemplary, these occurrences seem to have been isolated instances and have not been repeated. We, therefore, agree with the trial court's finding that visitation rights should be granted to respondent.

The trial court's decree made the following provision for visitation:

... that Respondent shall have the right to visit said child on alternate Sundays from 2:00 P.M. until 5:00 P.M. at the residence of the Petitioner. The Respondent shall not remove, attempt to remove, threaten to remove or make any effort to remove the said child from the residence of the Petitioner.

We find that this provision is unreasonably restrictive and denies respondent any meaningful visitation. See In re Marriage of McBee, 244 N.W.2d 327 (1976). The opportunity for a closer relationship between the child and his father, as well as other paternal relatives, is in the child's best interests.

We, therefore, make the following provisions for visitation: James shall have visitation rights on every other weekend from 10:00 A.M. Saturday until 6:00 P.M. Sunday, except as hereinafter provided. The first such visitation shall commence on June 16, 1979. James shall also have visitation rights on Christmas, Easter and Thanksgiving in alternate years. Deborah shall have Joseph on Thanksgiving, 1979, and

Easter, 1980. James shall have Joseph on Christmas, 1979. On the holidays James is entitled to visitation, such visitation shall begin at 10:00 A.M. on the day before and terminate at 6:00 P.M. on the day of such holiday. If any such holiday falls on a regularly scheduled weekend visitation, James shall not be entitled to additional visitation rights to compensate therefore.

During the summer months, James shall have visitation rights beginning at 10:00 A.M. on July 15 and terminating at 5:00 P.M. on July 29, or for an equivalent period arranged by the parties. The proportionate support payment payable under the decree shall not be suspended during this two week period.

Except as to the modification of visitation rights, we affirm the trial court.

AFFIRMED AS MODIFIED.