

IN THE COURT OF APPEALS OF IOWA

No. 4-315 / 93-1811

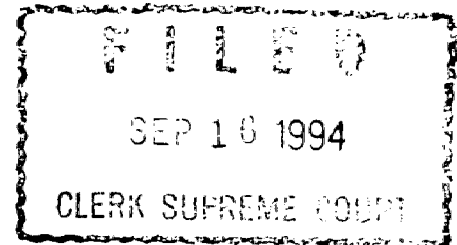
IN RE THE MARRIAGE OF GEORGE M. MAY AND
SUSAN MARIE MAY

Upon the Petition of
GEORGE M. MAY,

Appellant,

And Concerning
SUSAN MARIE MAY,

Appellee.



Appeal from the Iowa District Court for Linn County,
Thomas L. Koehler, Judge.

George May appeals from a modification of the parties'
dissolution decree. **AFFIRMED.**

Sherry L. Schulte and Allison M. Heffern of White &
Johnson, P.C., Cedar Rapids, for appellant.

James M. Carlin, Sioux City, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

CADY, J.

George May appeals from the district court's modification of the parties' dissolution decree. He contests the visitation and attorney fee provisions. We affirm the district court's decision.

The marriage between George and Susan May was dissolved in 1992, pursuant to a stipulation by the parties. Susan was awarded primary care of the parties' minor child, Jessica, born April 29, 1987. George was granted liberal visitation, including every Tuesday evening, alternating Thursday evenings, every other weekend, alternating holidays, and five nonconsecutive weeks during the summer. The parties were also required to provide forty-five days advance notice of any intent to move outside a fifty-mile radius of Cedar Rapids.

On February 4, 1993, George filed a modification petition requesting primary physical care of Jessica. The petition was based on Susan's intended move to Sioux City. Susan filed an answer asserting her own request to modify visitation and child support. Susan also filed an application for contempt alleging George had failed to pay her the property settlement required under the original decree. George filed a counter-application for contempt, alleging Susan failed to give him forty-five days notice of her intent to move to Sioux City and to execute quit claim deeds. Susan responded with a motion to dismiss George's modification petition, stating her move did not constitute a substantial change in circumstances.

In October 1993, George's modification petition came on for trial. Susan withdrew her contempt application and the issue of child support was stricken because George did not timely file a financial affidavit. The district court denied George's request to transfer primary care but modified visitation to include, the third weekend of every month and five consecutive weeks during the summer. The district court also denied George's application for contempt and ordered him to pay \$750 towards Susan's attorney fees because the evidence for his primary care request was "woefully lacking" and appeared to be an "insincere ploy" to secure a negotiations advantage.

On appeal, George contends the district court erred in awarding him only five, instead of his proposed nine, weeks of summer visitation. George also asserts the district court erred in ordering him to pay Susan \$750 in attorney fees. He argues that he presented sufficient evidence to support his request for primary care and the court failed to make its decision based on the financial conditions of the parties.

Susan requests appellate attorney fees.

I. Scope of Review

Our review of the district court's modification of the dissolution decree provisions is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented.

In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, particularly when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Visitation

George first asserts the trial court erred in awarding him only five weeks of summer visitation. He claims he should be granted additional summer visitation because five weeks does not fulfill the provisions of the stipulation requiring liberal visitation and Susan's move to Sioux City ended his weekday and alternating weekend visitation.

To justify a change of visitation rights the petitioner must demonstrate a change of circumstances since the divorce decree, "but such change may be much less extensive than would be necessary to obtain custody." Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). The custodial parent's change in residence is generally held to justify a revision of visitation rights. In re Marriage of Lower, 269 N.W.2d 822, 827 (Iowa 1978). Of course, the best interest of the child is the primary concern. Id.

George points out the best interests standard generally requires liberal visitation with the noncustodial parent and requests the court to grant him nine weeks of summer visitation broken into three week increments. We recognize that continued association with the noncustodial parent is beneficial to a child. In re Marriage of Muell, 408 N.W.2d

association between George and Jessica is not terminated by the change in visitation provisions. It merely functions under different guidelines. Under the new decree, George has visitation on the third weekend of every month; alternating holiday weekends ends; a one week period including Christmas in the odd numbered years and a one week period including New Year's Day in the even numbered years; every other year of the Thanksgiving weekend holiday; even numbered years of the spring break holiday; forty-eight hours when he is in the Sioux City area and five consecutive weeks of summer.

After reviewing the record anew, we believe the district court considered Jessica's best interest in fashioning the revised visitation schedule and properly balanced the tension between the initial decree and the changed circumstances. Awarding George five consecutive weeks of summer visitation will provide Jessica with the greatest continuity and allow both parents maximum continuing physical and emotional contact. Petitioner's request for nine weeks divided in three week increments would limit Susan's summer contact with Jessica to only two weeks and create instability for Jessica. The district court's visitation provision is affirmed.

III. Attorney Fees

George also asserts the district court erred in awarding Susan \$750 in attorney fees. In awarding Susan attorney fees the court stated "[t]he evidence produced by

the Petitioner as to primary care is woefully lacking and the request for primary care appears to be an insincere ploy" George responds he presented sufficient evidence to support his request for primary care and the court failed to make its decision based on the financial situation of the parties.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

Upon reviewing the evidence, we find no abuse of discretion. The district court considered the parties' relative ability to pay as well as the merit of George's petition for primary custody. It made specific findings regarding Susan's monthly income and George's assets. The award of \$750 to Sue for attorney fees is affirmed.

We decline to award Sue attorney fees on appeal. Costs of the appeal shall be paid by George.

AFFIRMED.