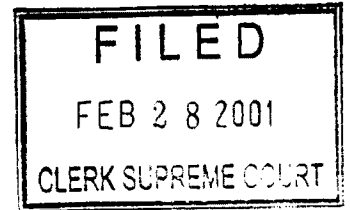


IN THE COURT OF APPEALS OF IOWA

No. 0-794 / 99-2054
Filed February 28, 2001



**IN RE THE MARRIAGE OF CATHERINE KREMER
AND STEVEN JOSEPH KREMER**

**Upon the Petition of
CATHERINE KREMER n/k/a CATHERINE JOHNSON,
Petitioner-Appellant,**

**And Concerning
STEVEN JOSEPH KREMER,
Respondent-Appellee.**

Appeal from the Iowa District Court for Chickasaw County, James L.
Beeghly, Judge.

Catherine Johnson appeals a district court order granting Steven Kremer's
petition to modify the visitation provisions of the parties' dissolution decree.

AFFIRMED.

Michael K. Kennedy of Kennedy & Kennedy, New Hampton, for appellant.

Richard D. Stochl of Elwood, O'Donohoe, Stochl, Braun & Churbuck, New
Hampton, for appellee.

Considered by Hayden, Habhab, and C. Peterson, Senior Judges.*

*Senior Judges assigned by order pursuant to Iowa Code section
602.9206 (2001).

C. PETERSON, S.J.

This appeal relates to a dispute concerning visitation with the minor children of the parties. A decree dissolving the marriage of Steven and Catherine Kremer was entered in California on July 8, 1992, incorporating a stipulation of the parties. At the time of the dissolution both parties were residing in California, and neither party contemplated moving from the state of California.

Legal and physical custody of the two minor children of the marriage (Michael, born March 17, 1987, and Kevin, born December 14, 1988) was awarded to Catherine, with specific visitation rights provided to Steven. If the parties resided within two hundred miles of each other, Steven was entitled to visitation every other weekend from 8 a.m. on Saturday until 6 p.m. on Sunday. He was also entitled to visitation on Father's Day and a portion of the Christmas holiday period. If the parties resided more than two hundred miles apart, Steven was entitled to an alternative extensive summer visitation. No provision was made in the decree concerning transportation expenses.

Steven filed a petition in Iowa to modify the visitation provisions of the decree of dissolution to recognize his new work schedule and to take into consideration the new living locations of both parties. He also included a request that the court require Catherine to contribute to the transportation expenses.

After hearing the evidence, the trial court modified the visitation provisions providing specific weekend, holiday, and summer visitations. The court further established an exchange location about half way between the parties' present residences.

The issues presented to this court for consideration are:

a. Whether there has been a material change of circumstances warranting a modification of the decree as it relates to the visitation provisions, and

b. Whether the modification of the visitation provided in the trial court order is in the best interests of the children.

We review modification of dissolution proceedings de novo. Iowa R. App.

P. 4. The appeal in an equity case is not a trial de novo, but is limited to de novo review of identified and preserved error. *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996). The trial court has reasonable discretion in passing upon the advisability or necessity of modification of visitation rights, and the reviewing court will not disturb the decision unless the record fairly shows that it fails to do equity. *In re Marriage of Salmon*, 519 N.W.2d 94, 95 (Iowa Ct. App. 1994); *Norenberg v. Norenberg*, 168 N.W.2d 794, 797 (Iowa 1969).

To justify a modification of visitation rights, the party requesting the change must show there has been a change of circumstances since the filing of the decree. *Nicolou v. Clements*, 516 N.W.2d 905, 906 (Iowa Ct. App. 1994); *In re Marriage of Jerome*, 378 N.W.2d 302, 305 (Iowa Ct. App. 1985). The degree of change required in a modification of visitation rights is much less than the change required in a modification for custody. *Id.* The focus is on the best interests of the children. See Iowa Code § 598.41.

At the time of the dissolution of the marriage, both parties lived in California, and neither Catherine nor Steven contemplated a move to Iowa. Catherine has remarried and resides with the children in Nashua, Iowa. Steven is also remarried and now resides in Dubuque, Iowa. Steven has changed his

job. His present work schedule includes periodic times when he is required to work on Saturday mornings. Communication between the parties since the dissolution has not been good. Disputes have arisen concerning extended visits and pickup arrangements for the children. Catherine has objected to persons other than Steven providing transportation for the children when picking up or returning the children.

This record supports a conclusion that there has been a change of circumstances that is material to the visitation arrangement provided in the dissolution decree.

The second issue raised by Catherine is the question of whether a change in the visitation arrangement is in the best interests of the children. Generally, we have considered liberal visitation rights to be in the best interests of the children. *In re Marriage of Stepp*, 485 N.W.2d 846, 850 (Iowa Ct. App. 1992). Section 598.41 provides:

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, other children, or a parent is likely to result from such contact with one parent

Iowa Code § 598.41.

Catherine expresses concerns about Steven's present wife or relatives picking up the children for weekend visitation. She also expresses concern about the effect of second-hand smoke on the health of the children while with Steven. A custodial parent may not generally dictate which persons the

noncustodial parent can come into contact with during visitation. *In re Marriage of Rykhoek*, 524 N.W.2d 1, 4 (Iowa Ct. App. 1994). The supreme court on a number of occasions has deleted conditions placed on a parent's visitation. See *In re Marriage of Fite*, 485 N.W.2d 662, 664 (Iowa 1992); *In re Marriage of Walsh*, 451 N.W.2d 492, 493 (Iowa 1990); *In re Marriage of Ullerich*, 367 N.W.2d 297, 299-300 (Iowa Ct. App. 1985). A court should place conditions on a parent's visitation rights only when the absence of such conditions is likely to result in direct physical harm or significant emotional harm to the child, other children, or a parent. Iowa Code § 598.41(1). Any conditions that are imposed must be in the best interests of the child. *Rykhoek*, 525 N.W.2d at 5. There is nothing in the record to suggest any risk to the children if a relative or Steven's present wife provides transportation for the children. There is no record to support a conclusion that a child has suffered any physical harm resulting from someone smoking in his presence. There is insufficient showing to warrant imposing any conditions on visitation. The trial court correctly declined to do so.

Catherine requests the court to set aside the trial court's determination the parties share the obligation for transportation of the children for visitation with Steven. It is her contention that the requirement for sharing transportation arrangements is solely for Steven's convenience and no showing is made that it is for the best interests of the children. This court cannot share that view. Transportation considerations are an aspect of the visitation arrangement and are a proper consideration for modification when the visitation issue arises. In all visitation arrangements the court must take into account, among other things, the

convenience of the parties in implementing the plan. Work schedules, vacation schedules, travel requirements, geographical distances, and similar issues are all factored in when the visitation issue is provided in a court order. Facilitating the visitation arrangement benefits the children. The issue for determination concerning transportation arrangements after there has been a determination of a material change of circumstances is whether the arrangement is fair and equitable to both parties under the circumstances and not an abuse of discretion. *In re Marriage of Bonnette*, 492 N.W.2d 717, 722 (Iowa Ct. App. 1992). The trial court, in its discretion, determined that the circumstances warranted each party providing a share of the transportation arrangements during the visitation process. We agree.

The decision of the trial court is affirmed. Costs are assessed to Catherine.

AFFIRMED.