FILED
OCT 05 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-253 / 88-1906

EDWARD A. KETELSEN, MARGARET KETELSEN, and EDWARD J. KETELSEN,

Petitioners-Appellants,

vs.

STACEY LEE MENICUCCI,

Respondent-Appellee.

Appeal from the Iowa District Court for Cedar County, Edward B. de Silva, Jr., Judge.

Petitioners appeals the decision of the district court which denied their petition for modification of a custody decree and denied their petition for grandparent custody. **REVERSED AND REMANDED.**

James C. Larew of Hayek, Hayek, Hayek & Holland, Iowa City, for petitioners-appellants.

L. Jeffrey Zearley, Tipton, for respondent-appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

HABHAB, J. 291

Appellants appeal the district court's denial of custody modification of a minor child.

Stacey Lee Menicucci and Edward J. Ketelsen are the parents of Denise Anne Ketelsen, born April 23, 1987. Stacey and Edward were never married. Stacey filed a petition for custody and child support. Following a stipulation by the parties, on October 23, 1987, the district court awarded the parties joint legal custody, with primary physical care given to Stacey. The parties were to have custody of Denise on alternating weeks. No child support was ordered.

On May 27, 1988, Edward's parents, Edward A. Ketelsen and Margaret Ketelsen, filed a petition stating there had been a change in circumstances and asking that they be given custody of Denise. The court found that there had not been a substantial change in circumstances. Nonetheless, visitation was modified so that Edward and his parents should have visitation every third week instead of every other week. The court noted that Stacey was on ADC and that Edward should be paying support as warranted by his employment and circumstances. The Ketelsens appeal the decision of the district court.

Appellants assert: (1) primary physical care of Denise should be awarded to Edward or, in the alternative, to the paternal grandparents, Edward A. Ketelsen and Margaret Ketelsen; or (2) the case be remanded for further evidence

on the criminal records of the maternal grandmother's boyfriend, Gordon Ruffner, and an ex-boyfriend of Stacey's, Paul Mathis. The trial court had excluded evidence of the specifics of the crimes involved based upon its interpretation of Iowa Rule of Evidence 609. We reverse and remand.

Our review of these matters is de novo. Iowa R. App. P. 4. We give weight to the district court's findings of fact, but are not bound by them. Iowa R. App. P. 14(f)(7). The first and governing consideration of the courts in determining custody issues is the best interests of the child. Iowa R. App. P. 14(f)(15). See In re Marriage of Fish, 350 N.W.2d 226, 229 (Iowa App. 1984).

The Iowa Supreme Court has detailed the following standard to be applied in modification proceedings[1]:

> The applying party must establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must be more or less permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being.

---

1. The criteria we apply here are the same, regardless of whether the parents dissolved their marriage or are unwed. Cf. Neubauer v. Newcomb, 423 N.W.2d 26 (Iowa App. 1988).

In re Marriage of Zabecki, 389 N.W.2d 396, 398 (Iowa 1986). The trial court found no such change in circumstances.

During the course of the modification trial, appellants sought to introduce evidence that Paul Mathis, a former boyfriend of Stacey, and Gordon Ruffner, the maternal grandmother's boyfriend, had criminal records. The trial court excluded evidence of the specific crimes involved based upon its interpretation of Iowa Rule of Evidence 609. Appellants made an offer of proof that Ruffner had been convicted for manslaughter involving a five-and-a-half-month-old child.

Iowa Rule of Evidence 609 concerns impeachment by evidence of criminal conviction. Appellants were not attempting to impeach Mr. Ruffner's credibility when the subject of his criminal record was broached. Rather, the issue was raised because of the possible danger Mr. Ruffner posed to Denise. When Stacey moved back into her mother's home, thereby exposing Denise to Mr. Ruffner's presence, the question of Denise's safety while in his presence became an extremely relevant issue--one into which the trial court should have permitted inquiry. See In re Marriage of Engelbach, 181 Ill. App. 3d 563, 537 N.E.2d 372, 379 (1989).

We are also of the opinion that the trial court erred in not permitting the testimony to be a part of the

record. In equity cases, the trial court should ordinarily not rule on objections to testimony, but receive all answers subject to the objection. This procedure permits de novo review of the record in the appellate courts. In re Marriage of Ralston, 242 N.W.2d 269, 271 (Iowa 1976); In re Scarlett, 231 N.W.2d 8, 10 (Iowa 1975); see Leo v. Leo, 213 N.W.2d 495, 497-98 (Iowa 1973).

The limitation placed on the testimony by the trial court precludes us from making a meaningful de novo review of the record. Therefore, we must reverse and remand this case for a new hearing in accordance with this opinion.

REVERSED AND REMANDED.