

IN THE COURT OF APPEALS OF IOWA

No. 7-527 / 96-1022

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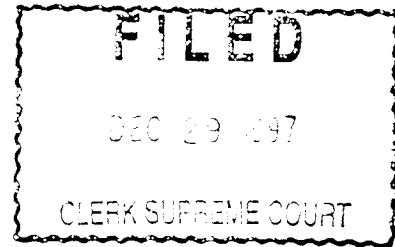
**IN RE THE MARRIAGE OF SHELLY R. MALONE
AND DAVID B. MALONE**

**Upon the Petition of
SHELLY R. MALONE,**

Petitioner-Appellee,

**And Concerning
DAVID B. MALONE,**

Respondent-Appellant.



Appeal from the Iowa District Court for Linn County, David M. Remley,
Judge.

David Malone appeals the modification of the visitation provisions of the
parties' dissolution decree. **AFFIRMED.**

David B. Malone, Center Point, pro se.

Stephen B. Jackson of Jackson Law Office, Cedar Rapids, for appellee.

Mark R. Brown, Cedar Rapids, guardian ad litem for minor children.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

PER CURIAM.

Respondent-appellant David Malone appeals that part of the district court's modification of the parties' decree of dissolution of marriage modifying his visitation with his son Jordan, born October 6, 1990. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Petitioner-appellee Shelly Malone filed an application for modification of the decree dissolving her marriage to David asking for changes in David's visitation with Janine and Jordan. The court appointed a guardian ad litem for the two minor children. The guardian ad litem attorney filed a report apparently accepted by the court. The court, after hearing, modified David's visitation with Janine and Jordan. The major modification as to Jordan was to establish a drop off point and to divide the four-week summer vacation. The trial court also restrained David from taking Jordan for medical evaluations or treatment except in the case of an emergency.

David appeals, contending the trial court should not have restricted him from taking Jordan for medical treatment, did not properly consider medical evidence, and did not properly assess Shelly's care of Jordan. David also asserts the guardian ad litem representing the children did not make an adequate investigation.

To modify a decree of dissolution, the petitioner must show a substantial change in circumstances not contemplated by the trial court. Iowa Code § 598.21(8); *In re Marriage of Vetternack*, 334 N.W.2d 761, 762 (Iowa 1983). The proof needed

to modify visitation is less than that needed to modify custody. *In re Marriage of Rykhoek*, 525 N.W.2d 1,3 (Iowa App. 1994).

This case deals with the problems of two concerned and loving parents unable to put behind them the hostilities generated in dissolving their marriage. Their hostilities toward each other have gotten in the way of their children's interests. Neither party is blameless. In June 1995, the trial court appointed an attorney to represent the children because, "[t]his dissolution case in general, and the matters concerning custody and visitation in particular, have been a source of bitterness, vindictiveness, and legal wrangling since its inception."

David took Jordan to a number of doctors. There were disputes on the reasons David took Jordan to the doctors. The guardian ad litem did not accept David's interpretation of the facts. His report indicates he made an adequate investigation. The trial court heard the evidence and saw the parties.

Our review is de novo. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

The modification of the visitation provisions are not substantial. The modification to restrict David in obtaining medical care for Jordan is reasonable. David is of the opinion Shelly is not adequately caring for Jordan's medical needs.

As joint custodian, David retains the right to request Shelly obtain medical treatment for Jordan. Iowa Code section 598.41(5). If there is a reasonable basis for him to determine there is an immediate need for medical treatment, the modification allows David to see Jordan is treated.

Giving deference to the factual findings of the trial court as to credibility of witnesses, we affirm.

AFFIRMED.