

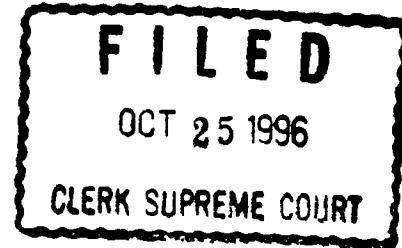
IN THE COURT OF APPEALS OF IOWA

No. 6-178 / 95-828

IN RE THE MARRIAGE OF BRUCE L. ACTON AND CHERYL L. ACTON

Upon the Petition of
BRUCE L. ACTON,
Appellant,

And Concerning
CHERYL L. ACTON,
Appellee.



Appeal from the Iowa District Court for Scott County, James R. Havercamp,
Judge.

Bruce Acton appeals the district court's order modifying the visitation
provisions in the parties' dissolution of marriage decree. **AFFIRMED.**

James D. Hoffman of Carlin, Hellstrom & Bittner, Davenport, for appellant.

Edward N. Wehr, of Wehr, Berger, Lane & Stevens, Davenport, for appellee.

Considered by Cady, P.J., Vogel, J., and Peterson, S.J.*

*Senior judge from the First District serving on this court by order of the Iowa
Supreme Court.

PETERSON, S.J.

The marriage of Bruce L. Acton (Bruce) and Cheryl L. Acton (Cheryl) was dissolved by a decree entered on July 15, 1994. Custody of the parties' two minor children, Jason and Elisa, was awarded to them jointly, with the physical placement with Cheryl. Bruce was awarded reasonable rights of visitation. On November 9, 1994, Bruce filed an application to modify the decree, requesting that specific visitation rights be established. That matter came before the court on March 10, 1995, and at the conclusion of the hearing, the trial judge concluded the decree should be modified and established specific rights of visitation.

Bruce appeals that modification, contending he should be awarded midweek visitation rights and visitation rights on Christmas Day.

I. Standard of Review. In equity actions, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Background. Bruce and Cheryl were married in May of 1979. They had two children, Jason and Elisa. At the time of the trial in May of 1994, Jason was fifteen years of age and Elisa was five years of age. The parties agreed at the time of the trial that visitation with the nonprimary care giver should be reasonable and not

scheduled. Accordingly, when the decree was entered, Bruce was awarded reasonable rights of visitation.

Bruce and Cheryl were unable to agree on some aspects of the visitation, and Bruce filed an application to modify that decree. During the trial, he specifically requested certain visitation. Cheryl, on the other hand, introduced respondent's exhibit A, which was not in the appendix, setting forth what she believed was reasonable visitation. The trial court did not award Bruce's requested midweek visitation on Thursdays and alternating visitation on Christmas Day as he requested.

During the parties' married life, Bruce and Cheryl and the children spent Christmas Eve with Bruce's family. The abstract does not indicate where this took place, but we presume it was in the vicinity of the Davenport-Bettendorf area where Bruce and Cheryl now live.

Christmas Day was then spent with Cheryl's relatives in the Waterloo, Iowa, area. Bruce participated in the activities at Cheryl's family with the exception of the two Christmases immediately prior to the dissolution because the parties were separated.

Bruce has a sister living in the area; however, his parents spend the winter months in Texas. He would like to alternate Christmas Eve and Christmas Day with the children. His reason for that request is "I would like to establish a tradition with the kids of at least having them on Christmas Day, which I have tried to with the last fifteen years with just the family on Christmas Day by ourselves."

Cheryl has three brothers and sisters, and they live in the Waterloo area. She would like to continue the tradition of spending Christmas Eve with Bruce's family and Christmas Day with her family. She contends it would be difficult to alternate, but does not specify the difficulty.

III. Visitation. Prior cases concerning modification of child visitation are of little precedential value. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). We must seek only to establish that which will be in the best interests of the child. We must do so in light of what is reasonable and which will assure maximum continuing physical, emotional contact with both parents and which will encourage parents to share the rights and responsibilities of raising the child and will not cause physical harm or significant emotional harm to the child or a parent. *In re Marriage of Bunch*, 460 N.W.2d 890, 891 (Iowa App. 1990). The question of midweek visitation concerns whether such visitation would be unduly disruptive to the children. *In re Marriage of Fish*, 350 N.W.2d 226, 230-231 (Iowa App. 1984). It has been allowed in situations where both parties agree. *In re Marriage of Krone*, 530 N.W.2d 468, 472 (Iowa App. 1995). It has been allowed where the child would be with a baby-sitter because of the work schedule of the custodial parent. *In re Marriage of Ertmann*, 376 N.W.2d 918, 922 (Iowa App. 1985). The fact that the parties reside in the same town and only a short distance apart has also been given consideration in allowing this type of visitation. *In re Marriage of Muell*, 408 N.W.2d 774, 777 (Iowa App. 1987).

In this situation, we are unable to determine from the record what impact, if any, the midweek visitation would have on the children. It does not show if this would have an impact on their schooling, on their other activities, nor does it show the extent of travel involved.

Bruce argues that the record does not show that midweek visitation would be disruptive. It was his burden to show that midweek visitation would not be unduly disruptive. The burden of proof on an issue is upon the party who would suffer the loss if the issue is not established. Iowa R. App. P. 14(f)(5). We affirm the trial court on the request for midweek visitation.

We also affirm the trial court on the question of Christmas visitation. A tradition has been established in this family that Christmas Eve be spent with Bruce's parents and Christmas Day be spent with Cheryl's parents. We also note that Bruce's parents no longer reside in the area.

We would like to emphasize that the visitation periods granted by the court decree are the **minimum**. Bruce and Cheryl are expected to actively encourage positive relations between the other parent and the children. *In re Marriage of Toedter*, 473 N.W.2d 233, 235 (Iowa App. 1991).

In conclusion, we affirm the trial court's modification of the visitation rights in the decree.

AFFIRMED.